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IX. Execution, Delivery, and Acceptance

A. In General

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Research References

West's Key Number Digest

West's Key Number Digest, Deeds 44, 48, 49, 51, 52

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IX. Execution, Delivery, and Acceptance

A. In General

§ 87. Generally

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West's Key Number Digest

West's Key Number Digest, Deeds 44

A deed must be in writing.[1] A valid grant of an interest in real property requires that the instrument be executed by the grantor.[2] The term "execution" of a deed connotes all acts which are necessary to the operativeness of the instrument, including signing, sealing when necessary, attestation and acknowledgment when required by statute, and delivery to the grantee or to someone in his behalf.[3] Nevertheless, a deed is often said to be executed, using the word in a sense excluding delivery.[4]

When it is intended that a deed be executed by several persons with the purpose of conveying the interest of all in the land forming the subject in the deed, the deed does not become operative until it is in fact executed by all the intended grantors. Such a deed will not operate to convey the interest of one grantor who executes it where the others never do so.[5]

Footnotes

1 Grisham v. Edwards, 86 So. 3d 987 (Ala. Civ. App. 2011), cert. denied, 86 So. 3d 993 (Ala. 2011); Curry v. Curry, 267 Ga. 66, 473 S.E.2d 760 (1996); Bliss v. Bliss, 127 Idaho 170, 898 P.2d 1081 (1995); Mitchell v. Clark, 448 So. 2d 681 (La. 1984); Kesinger v. Logan, 113 Wash. 2d 320, 779 P.2d 263 (1989).

2 Grisham v. Edwards, 86 So. 3d 987 (Ala. Civ. App. 2011), cert. denied, 86 So. 3d 993 (Ala. 2011); US Bank Nat. Ass'n v. Cox, 341 S.W.3d 846 (Mo. Ct. App. W.D. 2011).

3 Williams v. Kidd, 170 Cal. 631, 151 P. 1 (1915); Turlington v. Neighbors, 222 N.C. 694, 24 S.E.2d 648 (1943); Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998).

4 Ex parte Lynn, 727 So. 2d 90 (Ala. 1999); Taylor v. Sanford, 108 Tex. 340, 193 S.W. 661, 5 A.L.R. 1660 (1917); Lenhart v. Desmond, 705 P.2d 338 (Wyo. 1985).

5 Haviland v. Haviland, 130 Iowa 611, 105 N.W. 354 (1905).

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IX. Execution, Delivery, and Acceptance

A. In General

§ 88. Statutory requirements; acknowledgment

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 44, 52

In practically all jurisdictions, statutes provide for the acknowledgment of deeds,[1] usually only in order that the deed may be recorded under the recording laws, and when this is the case, an unacknowledged deed is binding between the parties thereto, their heirs and representatives, and persons having actual notice of the instrument,[2] and will convey at least an equitable title.[3] Under some statutes, however, the acknowledgment of the deed by the grantor before a proper officer is a prerequisite to the validity of the deed, even as between the parties, as much as the signing of the deed.[4] Under such statutes, a deed which lacks an acknowledgment before a proper officer or which is defectively acknowledged is invalid and will not, in the absence of a curative statute, pass title to the grantee.[5]

A curative statute for deeds with defective acknowledgments otherwise has no bearing on a deed's validity.[6] However, a curative statute for the validation of unacknowledged deeds which are executed by grantors and signed in due form does not apply to validate a void deed, such as where a necessary grantor never makes the grant.[7]

A stockholder and director may properly acknowledge a deed to which the corporation is a party.[8]

An acknowledgment to a deed is entitled to great weight and can be impeached only when the evidence is clear and convincing.[9]

A deed acknowledged before a person not qualified by law to take acknowledgments is invalid, where the law makes acknowledgment essential to the validity of the deed, but it is sufficient if the officer is a de facto officer.[10]

Footnotes

[1] McWilliams v. Clem, 228 Mont. 297, 743 P.2d 577 (1987); Kesinger v. Logan, 113 Wash. 2d 320, 779 P.2d 263 (1989).

[2] Am. Jur. 2d, Acknowledgments § 72.

[3] Matson v. Johnson, 48 Wash. 256, 93 P. 324 (1908).
As to the recording laws, see Am. Jur. 2d, Acknowledgments §§ 71 to 75.

[4] Lewis v. Herrera, 208 U.S. 309, 28 S. Ct. 412, 52 L. Ed. 506 (1908).

[5] Bowne v. Ide, 109 Conn. 307, 147 A. 4, 66 A.L.R. 1036 (1929); McWilliams v. Clem, 228 Mont. 297, 743 P.2d 577 (1987).
As to the validity and construction of statutes curing defective acknowledgments, see Am. Jur. 2d, Acknowledgments § 92.

[6] Greenlee v. Mitchell, 607 So. 2d 97 (Miss. 1992).

[7] McWilliams v. Clem, 228 Mont. 297, 743 P.2d 577 (1987).

[8] Gulf Land & Development Co. v. McRaney, 197 So. 2d 212 (Miss. 1967).

[9] Ingram v. Horn, 294 Ala. 353, 317 So. 2d 485 (1975).
As to the degree of proof required to impeach a certificate of acknowledgment, see Am. Jur. 2d, Acknowledgments § 85.

[10] Pass v. Stephens, 22 Ariz. 461, 198 P. 712 (1921).
As to the effect of an acknowledgment taken by de facto officer, see Am. Jur. 2d, Acknowledgments § 12.

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IX. Execution, Delivery, and Acceptance

A. In General

§ 89. Averments or denials as to execution

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 44, 49, 51

It is good practice to aver specifically that a deed was executed and delivered or was duly executed, but it seems that such averment is not essential. In view of the inclusive meaning of the term "execution," an averment that a deed was "made and executed" means that the deed was signed, sealed, and delivered.[1]

If the fact of delivery only is contested, however, the answer may, and should, admit other requirements as to due execution and specifically deny that the deed was ever delivered.[2]

Footnotes

1 Martin v. Martin, 76 Neb. 335, 107 N.W. 580 (1906).

2 Cartright v. Cartright, 70 W. Va. 507, 74 S.E. 655 (1912).

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IX. Execution, Delivery, and Acceptance

A. In General

§ 90. Necessity of revenue stamps

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 48

Documentary stamp taxes are often imposed by state law on deeds and certain other instruments.[1] Such instruments are complete without affixing revenue stamps.[2]

Footnotes

1 Am. Jur. 2d, State and Local Taxation §§ 541 to 543.

2 U.S. v. Hickox, 356 F.2d 969 (5th Cir. 1966); Rand v. Rand, 132 F. Supp. 929 (E.D. Ky. 1955), judgment aff'd, 234 F.2d 631 (6th Cir. 1956); Kanner v. Startz, 203 S.W. 603 (Tex. Civ. App. San Antonio 1918), writ refused, (Feb. 19, 1919).
As to the probative effect of presence or absence of revenue stamps, see § 81.

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IX. Execution, Delivery, and Acceptance

A. In General

§ 91. Presumption and proof as to date of execution

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 44

When there are no indications of falsity on the face of a deed, the presumption of law is that it was executed upon the day of its date.[1] This is true even where the deed was unacknowledged.[2]

Footnotes

1 Nelson v. Brown, 164 Ala. 397, 51 So. 360 (1910); Berigan v. Berrigan, 413 Ill. 204, 108 N.E.2d 438 (1952); Breshears v. Breshears, 360 Mo. 1057, 232 S.W.2d 460 (1950).

2 Berigan v. Berrigan, 413 Ill. 204, 108 N.E.2d 438 (1952).

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IX. Execution, Delivery, and Acceptance

B. Signature

Topic Summary | Correlation Table

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West's Key Number Digest, Deeds 45

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IX. Execution, Delivery, and Acceptance

B. Signature

§ 92. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 45

Forms

Am. Jur. Legal Forms 2d § 87:219 (Testimonium—Grantor signing by two names)

The signature (or testimonium) of the grantor is essential to the validity of a deed of real property. In many jurisdictions, statutes require the grantor's signature to a deed of conveyance,[1] and in most jurisdictions, the Statute of Frauds is construed to render the grantor's signature essential to convey the grantor's interest in land.[2] In the absence of statutory provision to the contrary,[3] acknowledgment of the deed will not cure the omission to sign it.[4] It is not essential, however, to the validity of a deed that the required signature of the grantor be in the grantor's own handwriting; another may sign for the grantor[5] or the grantor may sign the deed with another person assisting in steadying the grantor's hand and tracing lines.[6]

A deed from two or more grantors need not be signed by them at the same time; it is sufficient if it is fully executed at the time of delivery.[7]

Footnotes

[1] Smith v. Smith, 820 So. 2d 64 (Ala. 2001); Curry v. Curry, 267 Ga. 66, 473 S.E.2d 760 (1996); Bliss v. Bliss, 127 Idaho 170, 898 P.2d 1081 (1995); McDaniel v. Carruth, 637 S.W.2d 498 (Tex. App. Corpus Christi 1982); Kesinger v. Logan, 113 Wash. 2d 320, 779 P.2d 263 (1989).
A deed not signed by the grantor or the grantor's attorney cannot pass title. Caron v. Wadas, 1 Mass. App. Ct. 651, 305 N.E.2d 853 (1974).

[2] Sterling v. Park, 129 Ga. 309, 58 S.E. 828 (1907).

[3] Loyd v. Oates, 143 Ala. 231, 38 So. 1022 (1905).

[4] American Sav. Bank & Trust Co. v. Helgesen, 64 Wash. 54, 116 P. 837 (1911), on reh'g, 67 Wash. 572, 122 P. 26 (1912).

[5] § 96.

[6] Watson v. Johnson, 1965 OK 115, 411 P.2d 498 (Okla. 1965).

[7] Melton v. Sneed, 1940 OK 502, 188 Okla. 388, 109 P.2d 509 (1940).

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IX. Execution, Delivery, and Acceptance

B. Signature

§ 93. Position in instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 45

Generally, it is not essential, under the Statute of Frauds, that the name of the party whose signature is required, or who is required to sign a contract, be subscribed; the writing of such party's name at the top, in the body, or at the bottom of the instrument is sufficient if it is written for the purpose of giving authenticity to the instrument.[1] It not essential to the validity of a deed that the signature of the grantor be placed at the end of the deed, where the law requires signing only,[2] provided the signature is in such position that it is manifestly applicable to the whole deed.[3]

Footnotes

1 Am. Jur. 2d, Statute of Frauds § 258.

2 Wetzel v. Lessert, 1934 OK 563, 169 Okla. 294, 36 P.2d 750 (1934); McAbee v. Gerarden, 187 Wis. 399, 204 N.W. 484 (1925).

3 McAbee v. Gerarden, 187 Wis. 399, 204 N.W. 484 (1925).

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IX. Execution, Delivery, and Acceptance

B. Signature

§ 94. Form and sufficiency; signature by mark

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 45

Forms

Am. Jur. Legal Forms 2d § 87:224 (Attestation—Signature by mark or fingerprint)

A deed which the grantor signs by a cross or other mark is sufficient.[1] The validity of a signature on a deed does not turn on the form of the mark; indeed, any mark will suffice as long as that mark is adopted as one's own.[2] The signature may be made by the grantor's cross or mark even though the grantor is able to read and write[3] and is valid if the deed is in all other respects a valid one. So long as a symbol is authenticated in the attestation clause, the deed is not invalidated if the grantor's name is written over or under the grantor's mark, if the grantor's name as written is misspelled,[4] or if the words "his mark" or "her mark" are omitted.[5]

A signature made by a rubber stamp, typewriter, or printing becomes valid and binding when adopted by the grantor.[6]

Footnotes

1 Loyd v. Oates, 143 Ala. 231, 38 So. 1022 (1905); Aberdeen Oil Co. v. Goucher, 235 Ark. 787, 362 S.W.2d 20 (1962); Layton v. New York Life Ins. Co., 55 Cal. App. 202, 202 P. 958 (1st Dist. 1921); Runge v. Moore, 196 N.W.2d 87 (N.D. 1972).

2 Carrozza v. Carrozza, 944 A.2d 161 (R.I. 2008).

3 Ford v. Ford, 27 App. D.C. 401, 6 L.R.A.N.S. 442, 7 Am. Ann. Cas. 245, 1906 WL 19669 (App. D.C. 1906).

[4] Agurs v. Belcher & Creswell, 111 La. 378, 35 So. 607 (1903).
As to attestation, see §§ 98 to 101.

[5] Loyd v. Oates, 143 Ala. 231, 38 So. 1022 (1905).

[6] Mondragon v. Mondragon, 113 Tex. 404, 257 S.W. 215 (1923).

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IX. Execution, Delivery, and Acceptance

B. Signature

§ 95. Form and sufficiency; signature by mark—Signature in pencil

Topic Summary | Correlation Table | References

West's Key Number Digest
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Unless a statute so requires, it is not essential to the validity of a deed that the signature of the grantor be in ink.[1] In conformity with decisions affecting other classes of written instruments,[2] a deed signed with a lead pencil is valid.[3]

Footnotes

1 Kleine v. Kleine, 281 Mo. 317, 219 S.W. 610, 8 A.L.R. 1335 (1920).

2 Am. Jur. 2d, Statute of Frauds § 358.

3 Kleine v. Kleine, 281 Mo. 317, 219 S.W. 610, 8 A.L.R. 1335 (1920).

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IX. Execution, Delivery, and Acceptance

B. Signature

§ 96. Signature by third person or agent

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West's Key Number Digest

West's Key Number Digest, Deeds 45

Forms

Am. Jur. Legal Forms 2d § 87:220 (Testimonium—Execution by attorney-in-fact)
Am. Jur. Legal Forms 2d § 87:221 (Testimonium—Execution by attorney-in-fact—With written authorization annexed)

The rule requiring a deed to be signed by the grantor does not require that the signature be affixed by the grantor. It is sufficient if the grantor's name is written by another, who does so at the grantor's request and in the grantor's presence.[1] In such cases, the instrument becomes the grantor's deed and is as binding upon the grantor to all intents and purposes as if the grantor had personally affixed his or her signature.[2] This rule is applicable even though the grantor can read and write.[3]

An owner of land may authorize another to execute a conveyance of the land[4] although many statutes require a formal authorization where an agent is to execute a conveyance.[5] The deed should purport to be the deed of the principal, and the attorney should execute it in the name of and for the principal.[6]

Footnotes

1 Normand v. Brawley, 63 F.2d 446 (C.C.A. 5th Cir. 1933); Ford v. Ford, 27 App. D.C. 401, 6 L.R.A.N.S. 442, 7 Am. Ann. Cas. 245, 1906 WL 19669 (App. D.C. 1906); Blaisdell v. Leach, 101 Cal. 405, 35 P. 1019 (1894); Elmore v. Butler, 169 So. 2d 717 (La. Ct. App. 2d Cir. 1964).

2 Watson v. Johnson, 1965 OK 115, 411 P.2d 498 (Okla. 1965).

[3] Ford v. Ford, 27 App. D.C. 401, 6 L.R.A.N.S. 442, 7 Am. Ann. Cas. 245, 1906 WL 19669 (App. D.C. 1906).

[4] Am. Jur. 2d, Statute of Frauds § 257.

[5] Am. Jur. 2d, Agency § 121.

[6] Am. Jur. 2d, Agency §§ 122 to 129.

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C. Seal

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West's Key Number Digest, Deeds 36, 48

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C. Seal

§ 97. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Contracts 46

Some states still follow the common law rule requiring a seal in order that a deed be a valid conveyance of property.[1] A seal gives rise to a presumption of the presence of consideration and estops a covenantor from denying consideration except for fraud.[2] Any mark or scrawl may be a seal if proved to be a seal, and whether a scrawl affixed to a particular deed is a seal is a question of law to be determined by the court; but whether the grantor placed it there or adopted it as his or her seal if placed there by someone else are questions for the jury.[3] Where the deed is a form deed, and the printed word "Seal" in parentheses appears after each signature, it is presumed that the grantor intended to adopt the seal.[4] Where a seal is required, a deed which does not bear a seal will not convey legal title[5] although it might pass an equitable title to the grantee.[6]

Footnotes

1 Williams v. North Carolina State Bd. of Ed., 284 N.C. 588, 201 S.E.2d 889 (1974).

2 Garrison v. Blakeney, 37 N.C. App. 73, 246 S.E.2d 144 (1978).

3 Garrison v. Blakeney, 37 N.C. App. 73, 246 S.E.2d 144 (1978).

4 Garrison v. Blakeney, 37 N.C. App. 73, 246 S.E.2d 144 (1978).

5 Dennen v. Searle, 149 Conn. 126, 176 A.2d 561 (1961).

6 Barnes v. Banks, 223 Ill. 352, 79 N.E. 117 (1906).
As to the contractual effect of instrument inoperative as a deed, see § 294.

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IX. Execution, Delivery, and Acceptance

D. Attestation

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D. Attestation

§ 98. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 47

Forms

Am. Jur. Legal Forms 2d § 87:226 (Attestation—Delivery into escrow)

In some states, attestation is a statutory requirement[1] as a prerequisite of recordation, at least.[2]

Some statutes prescribe attestation or acknowledgment as alternative requirements of validity,[3] whereas other statutes require both acknowledgment and attestation.[4]

A state statute, which provides that no real estate may be transferred except by an instrument in writing signed in the presence of two subscribing witnesses, does not apply to contracts for the transfer of real estate even though a person can become legally bound to execute a deed by virtue of having signed the contract.[5]

Footnotes

1 Smith v. Smith, 820 So. 2d 64 (Ala. 2001); Medina v. Orange County, 147 So. 2d 556 (Fla. 2d DCA 1962).

2 Am. Jur. 2d, Records and Recording Laws § 58.

3 Byrd v. Bailey, 169 Ala. 452, 53 So. 773 (1910).

4 Read v. Toledo Loan Co., 68 Ohio St. 280, 67 N.E. 729 (1903).

[5] Carroll v. Dougherty, 355 So. 2d 843 (Fla. 2d DCA 1978).

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IX. Execution, Delivery, and Acceptance

D. Attestation

§ 99. Number of witnesses; competency to attest

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 47

In jurisdictions where only one witness is required by law, there is no reason, in principle, why the acknowledgment should not be effective as an attestation, even if defective as an acknowledgment, and many courts so hold.[1] The statutes of some states, however, prescribe that a deed must be attested by two witnesses, the deed being invalid—or, at least, inoperative to pass title—where attested by a single witness.[2]

There is nothing to prevent a notary from also being a witness to a deed.[3]

Stockholders of a corporation do not have a legal interest in a deed of the corporation and are not incompetent to attest such deed.[4]

Footnotes

1 First Nat. Bank v. Glenn, 10 Idaho 224, 77 P. 623 (1904); Falls Branch Coal Co. v. Proctor Coal Co., 203 Ky. 307, 262 S.W. 300, 37 A.L.R. 1172 (1924) (overruled in part on other grounds by, Hughett v. Caldwell County, 313 Ky. 85, 230 S.W.2d 92, 21 A.L.R.2d 373 (1950)).
As to the use of an acknowledgment for attestation, see Am. Jur. 2d, Acknowledgments § 68.

2 Eadie v. Chambers, 172 F. 73, 3 Alaska Fed. 396 (C.C.A. 9th Cir. 1909), rev'd on other grounds, 224 U.S. 564, 32 S. Ct. 597, 56 L. Ed. 885, 3 Alaska Fed. 855 (1912); Fulton v. Priddy, 123 Mich. 298, 82 N.W. 65 (1900).

3 Grisham v. Edwards, 86 So. 3d 987 (Ala. Civ. App. 2011), cert. denied, 86 So. 3d 993 (Ala. 2011); Walker v. City of Jacksonville, 360 So. 2d 52 (Fla. 1st DCA 1978); Cazares v. Cosby, 2003 UT 3, 65 P.3d 1184 (Utah 2003).

4 Read v. Toledo Loan Co., 68 Ohio St. 280, 67 N.E. 729 (1903).
As to the acknowledgment of a corporate deed by a stockholder-director, see § 88.

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IX. Execution, Delivery, and Acceptance

D. Attestation

§ 100. Form of attestation or signature of witness

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 47

Where the statute does not require any particular form of words for the attestation clause, any words clearly denoting that the persons signing are witnesses are sufficient.[1] A clause reading "signed, sealed, and delivered in the presence of" is sufficient.[2]

Footnotes

1 Richbourg v. Rose, 53 Fla. 173, 44 So. 69 (1907).

2 Richbourg v. Rose, 53 Fla. 173, 44 So. 69 (1907).

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IX. Execution, Delivery, and Acceptance

D. Attestation

§ 101. Effect of unattested, or defectively attested, deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 47

Where attestation is required by a recording statute,[1] the view generally adopted is that as against the grantor and those claiming under the grantor as mere volunteers, an unattested deed will pass title to the property.[2] While the acknowledgment of a deed is a prerequisite for recording, it adds nothing to the deed's validity as between the parties and others who know about it, and a defect in the acknowledgment does not detract from the force of the deed in making effective the conveyance intended to be made thereby.[3] Likewise, where a statute prescribes that a deed must be executed in the presence of two or more witnesses,[4] some courts have taken the view that a deed attested by a single witness is valid as between the parties to the deed[5] and passes an equitable interest.[6] In some jurisdictions, an unacknowledged deed is not available for recording nor is it effective against third parties.[7]

Footnotes

1 Am. Jur. 2d, Records and Recording Laws § 58.

2 Fulton v. Priddy, 123 Mich. 298, 82 N.W. 65 (1900).

3 McElwain v. Wells, 174 W. Va. 61, 322 S.E.2d 482 (1984).
Under Ohio law, a defectively executed deed conveys an equitable interest in the property to the grantee. In re Scott, 424 B.R. 315 (Bankr. S.D. Ohio 2010), aff'd, 2011 WL 1188434 (S.D. Ohio 2011).

4 § 98.

5 Medina v. Orange County, 147 So. 2d 556 (Fla. 2d DCA 1962); Fulton v. Priddy, 123 Mich. 298, 82 N.W. 65 (1900).

6 Fulton v. Priddy, 123 Mich. 298, 82 N.W. 65 (1900); Basil v. Vincello, 50 Ohio St. 3d 185, 553 N.E.2d 602 (1990).

7 Crum v. Butler, 601 So. 2d 834 (Miss. 1992).

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IX. Execution, Delivery, and Acceptance

E. Delivery

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Research References

West's Key Number Digest

West's Key Number Digest, Deeds 54, 56(1) to 56(3), 56(6), 57, 58(1) to 58(4), 59(1), 61, 62, 66, 67, 193, 194(1) to 194(3), 194(5), 200, 208(1), 208(4)

A.L.R. Library

A.L.R. Index, Deeds
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 54, 56(1) to 56(3), 56(6), 57, 58(1) to 58(4), 59(1), 61, 62, 66, 67, 193, 194(1) to 194(3), 194(5), 200, 208(1), 208(4)

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IX. Execution, Delivery, and Acceptance

E. Delivery

1. In General

§ 102. Generally; meaning of delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 54

There is no question but that a deed, to be operative as a transfer of realty, must be delivered.[1] The controversial questions are those concerning the sufficiency of the facts relied upon to establish delivery.[2] It is not requisite that the deed recite the fact of delivery in the attestation clause or elsewhere.[3]

While it is impossible to state in exact terms what will or will not constitute a delivery of a deed,[4] as a legal term, "delivery" of a deed imports that possession, or the right to possession,[5] of the instrument, which is in other respects complete, has passed from the grantor to the grantee with intent to pass title as a present transfer.[6] It is the final act which consummates the deed.[7]

Footnotes

1 § 103.

2 §§ 112 to 122.
As to presumptions and burden of proof, see §§ 129 to 148.

3 Richbourg v. Rose, 53 Fla. 173, 44 So. 69 (1907).

4 Hardin v. Kazee, 238 Ky. 526, 38 S.W.2d 438 (1931); Hayes v. Moffatt, 83 Mont. 214, 271 P. 433 (1928); Mumpower v. Castle, 128 Va. 1, 104 S.E. 706 (1920).

5 Exsted v. Exsted, 202 Minn. 521, 279 N.W. 554, 117 A.L.R. 599 (1938).

6 Cleveland v. Breckenridge, 173 Ark. 387, 292 S.W. 377 (1927); Kelly v. Bank of America Nat. Trust & Savings

Ass'n, 112 Cal. App. 2d 388, 246 P.2d 92, 34 A.L.R.2d 578 (4th Dist. 1952); Blackiston v. Russell, 328 Mo. 1164, 44 S.W.2d 22 (1931); Abbe v. Donohue, 90 N.J. Eq. 597, 107 A. 431 (Ct. Err. & App. 1919).
As to the controlling effect of intention, see § 105.

7 Gonzaga University v. Masini, 42 Idaho 660, 249 P. 93 (1926); Seibel v. Higham, 216 Mo. 121, 115 S.W. 987 (1908); Houck v. Houck, 93 Or. 281, 183 P. 3 (1919).

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IX. Execution, Delivery, and Acceptance

E. Delivery

1. In General

§ 103. Necessity of delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 54

A deed conveying title must be delivered as the final step in the execution of a deed.[1] Thus, a deed, to be operative as a transfer of the ownership of land or an interest or estate therein, must be delivered; it is delivery that gives the instrument force and effect.[2] However, the delivery of a signed but unrecorded deed is not always sufficient to transfer ownership of property.[3] An undelivered deed does not divest the grantor of, or invest the grantee with, title even though the intent to deliver is clear and the failure to deliver due to accident.[4]

CUMULATIVE SUPPLEMENT

Cases:

An actual failure of delivery of deed does not affect the title of a good faith third party because recordation passes title. West's Ann.Md.Code, Estates and Trusts, § 3–101. James B. Nutter & Co. v. Black, 225 Md. App. 1, 123 A.3d 535 (2015).

Before delivery, a deed is without force or effect and is merely a scroll under control of the grantor who is free to withdraw it, destroy it, or complete its execution by delivery. Morrow v. Morrow, 129 So. 3d 142 (Miss. 2013).

Although a quitclaim deed conveys all right, title, and interest of the grantor, if there is no delivery, there is no conveyance. SDCL §§ 43–4–7, 43–25–8. State v. Thomason, 2014 SD 18, 845 N.W.2d 640 (S.D. 2014).

[END OF SUPPLEMENT]

Footnotes

[1] U.S. v. O'Dell, 247 F.3d 655 (6th Cir. 2001) (applying Tennessee law); Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Johnson v. Ramsey, 307 Ark. 4, 817 S.W.2d 200 (1991); Williams v. Kidd, 170 Cal. 631, 151 P. 1 (1915); Curry v. Curry, 267 Ga. 66, 473 S.E.2d 760 (1996); Defendant A v. Idaho State Bar, 132 Idaho 662, 978 P.2d 222 (1999); Deslauriers v. Senesac, 331 Ill. 437, 163 N.E. 327, 62 A.L.R. 511 (1928); Walter v. Grover, 540 A.2d 120 (Me. 1988); Greenlee v. Mitchell, 607 So. 2d 97 (Miss. 1992); Hammack v. Coffelt Land Title, Inc., 348 S.W.3d 75 (Mo. Ct. App. W.D. 2011); Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994); Goddard v. Goddard, 192 Ohio App. 3d 718, 2011-Ohio-680, 950 N.E.2d 567 (4th Dist. Scioto County 2011); Carlile v. Carlile, 1992 OK 57, 830 P.2d 1369 (Okla. 1992); Kresser v. Peterson, 675 P.2d 1193 (Utah 1984); Estate of O'Brien v. Robinson, 109 Wash. 2d 913, 749 P.2d 154, 81 A.L.R.4th 1111 (1988); Walls v. Click, 209 W. Va. 627, 550 S.E.2d 605 (2001); Lenhart v. Desmond, 705 P.2d 338 (Wyo. 1985).

[2] McDermott v. U.S., 760 F.2d 879 (8th Cir. 1985) (applying Arkansas law); Smith v. Smith, 820 So. 2d 64 (Ala. 2001); Johnson v. Ramsey, 307 Ark. 4, 817 S.W.2d 200 (1991); Luna v. Brownell, 185 Cal. App. 4th 668, 110 Cal. Rptr. 3d 573 (2d Dist. 2010); Parramore v. Parramore, 371 So. 2d 123 (Fla. 1st DCA 1978); Vatacs Group, Inc. v. U.S. Bank, N.A., 292 Ga. 483, 738 S.E.2d 83 (2013); Defendant A v. Idaho State Bar, 132 Idaho 662, 978 P.2d 222 (1999); Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963); Reicherter v. McCauley, 47 Kan. App. 2d 968, 283 P.3d 219 (2012); Long Meadow Homeowners' Association, Inc. v. Harland, 89 So. 3d 591 (Miss. Ct. App. 2011), cert. granted, 78 So. 3d 906 (Miss. 2012) and aff'd, 89 So. 3d 573 (Miss. 2012); In re Marriage of Davault, 636 S.W.2d 422 (Mo. Ct. App. S.D. 1982); Williams v. North Carolina State Bd. of Ed., 284 N.C. 588, 201 S.E.2d 889 (1974); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Carlile v. Carlile, 1992 OK 57, 830 P.2d 1369 (Okla. 1992); Stockwell v. Stockwell, 2010 SD 79, 790 N.W.2d 52 (S.D. 2010); McDaniel v. Carruth, 637 S.W.2d 498 (Tex. App. Corpus Christi 1982).

[3] U.S. v. Wood, 982 F.2d 1, 37 Fed. R. Evid. Serv. 827 (1st Cir. 1992) (applying Maine law).

[4] Griswold v. Griswold, 148 Ala. 239, 42 So. 554 (1906); Lance v. Smith, 123 Fla. 461, 167 So. 366 (1936); Gonzaga University v. Masini, 42 Idaho 660, 249 P. 93 (1926); Emmons v. Harding, 162 Ind. 154, 70 N.E. 142 (1904); Allenbach v. Ridenour, 51 Nev. 437, 279 P. 32 (1929); Abbe v. Donohue, 90 N.J. Eq. 597, 107 A. 431 (Ct. Err. & App. 1919); Lynch v. Johnson, 171 N.C. 611, 89 S.E. 61 (1916).

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IX. Execution, Delivery, and Acceptance

E. Delivery

1. In General

§ 104. Necessity of delivery—As against innocent purchaser

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 54

Unless the grantor has ratified the deed by acts since the grantee obtained the custody of it,[1] or is estopped from asserting that the deed was never delivered,[2] an undelivered deed is inoperative even in favor of an innocent purchaser[3] or of one who had no notice that a deed in his or her chain of title had never been delivered.[4]

Footnotes

1 § 110.

2 § 109.

3 Gulf Coal & Coke Co. v. Alabama Coal & Coke Co., 145 Ala. 228, 40 So. 397 (1906); Watts v. Archer, 252 Iowa 592, 107 N.W.2d 549 (1961).

4 Gulf Coal & Coke Co. v. Alabama Coal & Coke Co., 145 Ala. 228, 40 So. 397 (1906).

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IX. Execution, Delivery, and Acceptance

E. Delivery

1. In General

§ 105. Intention as controlling factor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(2)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

Delivery of a deed is a question of intent.[1] A conveyance is valid only upon delivery of a deed with present intent to transfer.[2] Thus, the intention of the parties is an essential and controlling element of delivery of a deed,[3] and such intention may be inferred from the circumstances.[4] Intention has been called the "essence of delivery," and not only is it often the determining factor among other facts and circumstances but also it is the crucial test where constructive delivery is relied upon.[5] It is essential to the delivery of a deed that there be a giving of the deed by the grantor and a receiving of it by the grantee, with a mutual intention to pass the title from the one to the other.[6] It has been held that the true test of whether delivery of a deed passes title is whether the grantor intended to reserve to himself or herself the "locus penitentiae," which means an opportunity for changing one's mind, an opportunity to undo what one has done, or a right to withdraw from an incomplete transaction.[7]

CUMULATIVE SUPPLEMENT

Cases:

The question of delivery of deed, as required for conveyance by deed, is controlled by the intent of the grantor, and it is

determined by examining all the facts and circumstances preceding, attending, and following the execution of the instrument. Tex. Prop. Code Ann. § 5.021. Wheatley v. Farley, 610 S.W.3d 511 (Tex. App. El Paso 2020), review denied, (Jan. 22, 2021).

[END OF SUPPLEMENT]

Footnotes

[1] Luna v. Brownell, 185 Cal. App. 4th 668, 110 Cal. Rptr. 3d 573 (2d Dist. 2010); Hammack v. Coffelt Land Title, Inc., 348 S.W.3d 75 (Mo. Ct. App. W.D. 2011).

[2] Grgich v. Grgich, 2011 UT App 214, 262 P.3d 418 (Utah Ct. App. 2011).

[3] U.S. v. O'Dell, 247 F.3d 655 (6th Cir. 2001) (applying Tennessee law); Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Kelly v. Bank of America Nat. Trust & Savings Ass'n, 112 Cal. App. 2d 388, 246 P.2d 92, 34 A.L.R.2d 578 (4th Dist. 1952); Hill v. Sligar, 128 Idaho 858, 920 P.2d 74 (1996); Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963); Taylor v. Welch, 609 So. 2d 1225 (Miss. 1992); Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Hackett v. Hackett, 1967 OK 117, 429 P.2d 753 (Okla. 1967); Driskill v. Forbes, 566 S.W.2d 90 (Tex. Civ. App. Eastland 1978), writ refused n.r.e., (Nov. 22, 1978).
A valid delivery of a deed depends upon whether the grantor intended that it should be presently operative, and a manual transfer is not conclusive evidence of such intention. Luna v. Brownell, 185 Cal. App. 4th 668, 110 Cal. Rptr. 3d 573 (2d Dist. 2010).

[4] U.S. v. O'Dell, 247 F.3d 655 (6th Cir. 2001) (applying Tennessee law).

[5] Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Tutt v. Smith, 201 Iowa 107, 204 N.W. 294, 48 A.L.R. 394 (1925); Burke v. Burke, 141 S.C. 1, 139 S.E. 209, 56 A.L.R. 729 (1927); Taylor v. Sanford, 108 Tex. 340, 193 S.W. 661, 5 A.L.R. 1660 (1917); Tucker v. Inglish, 135 Wash. 146, 237 P. 297 (1925); Butts v. Richards, 152 Wis. 318, 140 N.W. 1 (1913).

[6] Williams v. Pacific Royalty Co., 247 F.2d 672 (10th Cir. 1957); West v. West By and Through West, 620 So. 2d 640 (Ala. 1993); Crowder v. Crowder, 303 Ark. 562, 798 S.W.2d 425 (1990); Kelly v. Bank of America Nat. Trust & Savings Ass'n, 112 Cal. App. 2d 388, 246 P.2d 92, 34 A.L.R.2d 578 (4th Dist. 1952); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Kniebbe v. Wade, 161 Ohio St. 294, 53 Ohio Op. 175, 118 N.E.2d 833 (1954); Burke v. Burke, 141 S.C. 1, 139 S.E. 209, 56 A.L.R. 729 (1927); Taylor v. Sanford, 108 Tex. 340, 193 S.W. 661, 5 A.L.R. 1660 (1917); Hanson v. Harding, 245 Va. 424, 429 S.E.2d 20 (1993); Bennett v. Neff, 130 W. Va. 121, 42 S.E.2d 793 (1947).

[7] Smith v. Lockridge, 288 Ga. 180, 702 S.E.2d 858 (2010).

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IX. Execution, Delivery, and Acceptance

E. Delivery

1. In General

§ 106. Intention as controlling factor—Intention to pass present title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(2), 56(3)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

The intention of the grantor that bears significantly on the question of delivery is the grantor's intention with respect to vesting the legal title of the land in the grantee.[1] To be valid and effective, the act of delivery of a deed must be accompanied by the intent that it becomes presently operative as such and presently pass title.[2] The grantor's intent may be directed to delivery of the deed, from which the conclusion of law will follow that the property passed to the grantee; but if the grantor intended to transfer present title to the property to the grantee, the grantor must have intended to deliver the deed,[3] and the grantor could not have intended delivery if the property was not to pass immediately by the deed.[4] When the evidence establishes that the property owner does not intend to pass a present interest in the property, then as between the parties there is no binding delivery even though the deed is recorded.[5]

CUMULATIVE SUPPLEMENT

Cases:

There was no effective delivery of unrecorded deeds that husband had executed and acknowledged to purportedly convey farm to trusts set up by him and for which he was trustee and of which he and son were beneficiaries, and thus wife, who was

not son's mother, held superior title to farm over son by virtue of husband's conveyance, in husband's individual capacity, of farm two years later to himself and wife as tenants by the entireties; although husband possessed the deeds for at least eight years and an attorney advised him to record them to fund the trusts, he did not record them, and husband also acted in direct contradiction to the trusts' supposed ownership of the farm by later transferring it to himself and wife. 69 Pa. Stat. Ann. §§ 541, 542. In re Estate of Plance, 175 A.3d 249 (Pa. 2017).

[END OF SUPPLEMENT]

Footnotes

[1] Payne v. Carver, 534 So. 2d 566 (Ala. 1988); Crowder v. Crowder, 303 Ark. 562, 798 S.W.2d 425 (1990); Hill v. Sligar, 128 Idaho 858, 920 P.2d 74 (1996); Bellin v. Bloom, 217 Ind. 656, 28 N.E.2d 53 (1940); Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980); Martinez v. Martinez, 101 N.M. 88, 678 P.2d 1163 (1984); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Carlile v. Carlile, 1992 OK 57, 830 P.2d 1369 (Okla. 1992).

[2] Johnson v. Ramsey, 307 Ark. 4, 817 S.W.2d 200 (1991); Kelly v. Bank of America Nat. Trust & Savings Ass'n, 112 Cal. App. 2d 388, 246 P.2d 92, 34 A.L.R.2d 578 (4th Dist. 1952); Curtiss v. Ferris, 168 Colo. 480, 452 P.2d 38 (1969); Hill v. Sligar, 128 Idaho 858, 920 P.2d 74 (1996); Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963); Poling v. Northup, 652 A.2d 1114 (Me. 1995); Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980); Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994); Martinez v. Martinez, 101 N.M. 88, 678 P.2d 1163 (1984); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Carlile v. Carlile, 1992 OK 57, 830 P.2d 1369 (Okla. 1992); Winegar v. Froerer Corp., 813 P.2d 104 (Utah 1991); Walls v. Click, 209 W. Va. 627, 550 S.E.2d 605 (2001); Lenhart v. Desmond, 705 P.2d 338 (Wyo. 1985).

[3] Fred T. Ley & Co. v. Wheat, 64 F.2d 257 (C.C.A. 5th Cir. 1933); Lee Hardware Co. v. Johnson, 132 Ark. 462, 201 S.W. 289 (1918); Hotaling v. Hotaling, 193 Cal. 368, 224 P. 455, 56 A.L.R. 734 (1924); Upton v. Merriman, 116 Minn. 358, 133 N.W. 977 (1911).

[4] Hotaling v. Hotaling, 193 Cal. 368, 224 P. 455, 56 A.L.R. 734 (1924); Blackiston v. Russell, 328 Mo. 1164, 44 S.W.2d 22 (1931); Snodgrass v. Snodgrass, 1924 OK 597, 107 Okla. 140, 231 P. 237, 52 A.L.R. 1213 (1924); Burke v. Burke, 141 S.C. 1, 139 S.E. 209, 56 A.L.R. 729 (1927); Taylor v. Sanford, 108 Tex. 340, 193 S.W. 661, 5 A.L.R. 1660 (1917); Spero v. Bove, 116 Vt. 76, 70 A.2d 562 (1950).

[5] Curtiss v. Ferris, 168 Colo. 480, 452 P.2d 38 (1969).
As to whether recording constitutes the equivalent of delivery, see § 118.

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IX. Execution, Delivery, and Acceptance

E. Delivery

1. In General

§ 107. Possession of deed without grantor's consent

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 54, 56(3)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

Forms

Am. Jur. Pleading and Practice Forms, Deeds § 5 (Complaint, petition, or declaration—For cancellation of deed—Wrongful taking and recording of deed without delivery)

Because the intent of the grantor is a paramount consideration on the question of the delivery of a deed,[1] a delivery which will pass title occurs only when the grantor parts with dominion over the deed with the intention to pass title.[2] A deed delivered without the consent of the grantor is of no effect,[3] and mere physical delivery alone is not enough.[4] Thus, a deed remains undelivered where possession of it was obtained surreptitiously[5] or by force,[6] theft,[7] or fraud.[8]

Footnotes

[1] § 105.

[2] Griffin v. Armana, 687 So. 2d 1188 (Miss. 1996); Jorgensen v. Crow, 466 N.W.2d 120 (N.D. 1991); Johndrow v. Johndrow, 1947 OK 315, 199 Okla. 363, 186 P.2d 325 (1947); Butts v. Richards, 152 Wis. 318, 140 N.W. 1 (1913).

[3] Griffin v. Armana, 687 So. 2d 1188 (Miss. 1996); Anderson v. Ruberg, 20 Wash. 2d 103, 145 P.2d 890 (1944).

[4] Tighe v. Davis, 283 Mich. 244, 278 N.W. 60 (1938); Jorgensen v. Crow, 466 N.W.2d 120 (N.D. 1991).

[5] McCarthy v. McCarthy, 82 Cal. App. 2d 166, 185 P.2d 821 (1st Dist. 1947); Glander v. Glander, 72 Idaho 195, 239 P.2d 254 (1951); Watts v. Archer, 252 Iowa 592, 107 N.W.2d 549 (1961); Anderson v. Ruberg, 20 Wash. 2d 103, 145 P.2d 890 (1944).

[6] Coe v. Wormell, 88 Wash. 119, 152 P. 716 (1915).

[7] Pappas v. Venetsanos, 19 Del. Ch. 347, 167 A. 842 (1933), aff'd, 20 Del. Ch. 453, 171 A. 925 (1934).

[8] Griffin v. Armana, 687 So. 2d 1188 (Miss. 1996); Merck v. Merck, 83 S.C. 329, 65 S.E. 347 (1909); Tucker v. Inglish, 135 Wash. 146, 237 P. 297 (1925).
As to the effect of an instrument procured by false statements with regard to its character, see §§ 165, 168, 169.

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IX. Execution, Delivery, and Acceptance

E. Delivery

1. In General

§ 108. Delivery of incomplete deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 54, 56(1)

A deed will not be regarded as delivered while anything remains to be done by the parties who propose to deliver it,[1] as where it is delivered on condition that it will not become effective until executed by all the grantors and it is never so executed.[2]

Footnotes

1 Boyd Lumber Co. v. Mills, 146 Ga. 794, 92 S.E. 534 (1917); Sheeby v. Scott, 128 Iowa 551, 104 N.W. 1139 (1905); Hardin v. Kazee, 238 Ky. 526, 38 S.W.2d 438 (1931); Bennett v. Neff, 130 W. Va. 121, 42 S.E.2d 793 (1947).
As to filling in the grantee's name after delivery, see § 34.

2 Haviland v. Haviland, 130 Iowa 611, 105 N.W. 354 (1905); Hardin v. Kazee, 238 Ky. 526, 38 S.W.2d 438 (1931); Bennett v. Neff, 130 W. Va. 121, 42 S.E.2d 793 (1947).

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IX. Execution, Delivery, and Acceptance

E. Delivery

1. In General

§ 109. Estoppel to deny delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(1)

The grantor in a deed who by any course of dealing by which the grantee is induced to assert ownership and incur obligations is estopped from asserting that the deed was invalid for want of delivery.[1] Such acts and conduct constitute, in effect, a ratification.[2] Where the grantor deposits a deed with the grantor's own agent with instructions not to deliver it to the grantee until some condition has been performed, most courts hold that by virtue either of the principle of estoppel or of apparent authority, delivery by the agent is effective in favor of an innocent purchaser.[3] Some courts, however, have held that in such circumstances, the deed is inoperative even in the hands of an innocent purchaser.[4] A deed conveying an interest in real estate cannot be delivered to a grantee in escrow, and a delivery to the grantee, even though stipulated to be upon certain conditions, will be treated as an absolute delivery.[5]

Footnotes

1 Gulf Coal & Coke Co. v. Alabama Coal & Coke Co., 145 Ala. 228, 40 So. 397 (1906).

2 Phelps v. Pratt, 225 Ill. 85, 80 N.E. 69 (1906).

3 Conklin v. Benson, 159 Cal. 785, 116 P. 34 (1911); Tutt v. Smith, 201 Iowa 107, 204 N.W. 294, 48 A.L.R. 394 (1925); Guthrie v. Field, 85 Kan. 58, 116 P. 217 (1911).

4 Harkreader v. Clayton, 56 Miss. 383, 1879 WL 3974 (1879); Clevenger v. Moore, 1927 OK 260, 126 Okla. 246, 259 P. 219, 54 A.L.R. 1237 (1927); Smith v. South Royalton Bank, 32 Vt. 341, 1859 WL 3609 (1859); Chipman v. Tucker, 38 Wis. 43, 1875 WL 6303 (1875).
As to estoppel to deny the delivery of a deed held in escrow, see Am. Jur. 2d, Escrow § 31.

5 Walls v. Click, 209 W. Va. 627, 550 S.E.2d 605 (2001).

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IX. Execution, Delivery, and Acceptance

E. Delivery

1. In General

§ 110. Subsequent assent or ratification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 62

A.L.R. Library

Joining in instrument as ratification of or estoppel as to prior ineffective instrument affecting real property, 7 A.L.R.2d 294

A deed procured without delivery by the grantor may be subsequently ratified by the grantor so that a good title becomes vested in the grantee.[1]

If the deed which did not become effective because of failure of delivery was not originally void, it may be ratified if the grantor by a subsequent instrument becomes equitably bound to fulfill the object expressed in the original instrument.[2] Ratification may be accomplished by the grantor's subsequent execution of a correction deed to the same premises.[3]

Footnotes

1 Whitney v. Dewey, 10 Idaho 633, 80 P. 1117 (1905); Phelps v. Pratt, 225 Ill. 85, 80 N.E. 69 (1906); Hawkins v. Howard, 1934 OK 29, 167 Okla. 480, 30 P.2d 696 (1934).
As to the ratification of a delivery of escrow, see Am. Jur. 2d, Escrow § 35.

2 Robinette v. Tidwell, 261 Ala. 538, 75 So. 2d 138 (1954); Gillen v. Gillen, 238 Ill. 218, 87 N.E. 388 (1909).

[3] Pacific Royalty Co. v. Williams, 227 F.2d 49 (10th Cir. 1955).

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IX. Execution, Delivery, and Acceptance

E. Delivery

1. In General

§ 111. Delivery as question of law or fact

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 66

What constitutes an effective delivery of a deed is a question of law,[1] but whether there has been a valid delivery generally presents a mixed question of law and fact.[2] The facts and circumstances of the case must be considered,[3] and from their detail is to be determined the legal question whether such acts and declarations constitute a legal delivery.[4]

Delivery is to be inferred from circumstances which by their very nature are equivocal and depend upon the subjective state of mind of the grantor. In such cases, delivery becomes a question of fact.[5] Where the question of delivery is dependent entirely upon intention, it is to be determined from all of the evidence bearing upon the issue,[6] including the conduct of the parties.[7] The questions whether the requisite intent to make delivery existed[8] and whether the grantor executed an intention to pass title by a sufficient delivery are both questions of fact and generally for the jury.[9]

Footnotes

1 Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977); Driskill v. Forbes, 566 S.W.2d 90 (Tex. Civ. App. Eastland 1978), writ refused n.r.e., (Nov. 22, 1978); Montgomery v. Callison, 226 W. Va. 296, 700 S.E.2d 507 (2010).

2 Pollock v. Brown, 569 S.W.2d 724 (Mo. 1978); Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980); Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977); Walls v. Click, 209 W. Va. 627, 550 S.E.2d 605 (2001).

3 Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Williams v. Kidd, 170 Cal. 631, 151 P. 1 (1915); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Norton v. Norton, 105 Or. 651, 209 P. 1048 (1922).

4 Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Creighton v. Elgin, 387 Ill. 592, 56 N.E.2d 825, 162 A.L.R. 883 (1944); Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977).

[5] Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Washington v. Washington, 2013 Ark. App. 54, 2013 WL 355972 (2013); Hotaling v. Hotaling, 193 Cal. 368, 224 P. 455, 56 A.L.R. 734 (1924); Poling v. Northup, 652 A.2d 1114 (Me. 1995); Exsted v. Exsted, 202 Minn. 521, 279 N.W. 554, 117 A.L.R. 599 (1938); Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980); Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Driskill v. Forbes, 566 S.W.2d 90 (Tex. Civ. App. Eastland 1978), writ refused n.r.e., (Nov. 22, 1978); Walls v. Click, 209 W. Va. 627, 550 S.E.2d 605 (2001).
As to a deed lodged with a third person for delivery on the grantor's death, see § 127.

[6] Hotaling v. Hotaling, 193 Cal. 368, 224 P. 455, 56 A.L.R. 734 (1924); St. Pierre v. Grondin, 513 A.2d 1368 (Me. 1986).

[7] Grilley v. Atkins, 78 Conn. 380, 62 A. 337 (1905).

[8] Kelly v. Bank of America Nat. Trust & Savings Ass'n, 112 Cal. App. 2d 388, 246 P.2d 92, 34 A.L.R.2d 578 (4th Dist. 1952).

[9] Culver v. Carroll, 175 Ala. 469, 57 So. 767 (1911); Luna v. Brownell, 185 Cal. App. 4th 668, 110 Cal. Rptr. 3d 573 (2d Dist. 2010).

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E. Delivery

2. Sufficiency of Delivery

§ 112. Generally

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West's Key Number Digest

West's Key Number Digest, Deeds 56(1)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

Forms

Am. Jur. Pleading and Practice Forms, Deeds § 4 (Checklist—Drafting a complaint to cancel a deed for nondelivery)
Am. Jur. Pleading and Practice Forms, Deeds § 11 (Instruction to jury—What constitutes delivery of deed)

While delivery may be by words or acts, or by both combined, no precise formula of acts or words is necessary,[1] and there is no universal test, applicable to all cases, whereby the sufficiency of delivery can be determined.[2] A sufficient delivery of a deed requires that there be a manifestation of the unequivocal intention of the grantor to relinquish all dominion and control over the instrument and to have it become presently effective as a transfer of title,[3] so as to deprive the grantor of all authority over it or of the right of recalling it.[4] Conversely, if the grantor does not evidence an intention to part presently and unconditionally with the deed, there is no delivery.[5]

Footnotes

[1] § 113.

[2] Chambers v. Chambers, 227 Mo. 262, 127 S.W. 86 (1910); Hayes v. Moffatt, 83 Mont. 214, 271 P. 433 (1928).

[3] Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Sides v. McDonald, 228 Ark. 673, 310 S.W.2d 16 (1958); Hill v. Donnelly, 56 Cal. App. 2d 387, 132 P.2d 867 (2d Dist. 1942); Defendant A v. Idaho State Bar, 132 Idaho 662, 978 P.2d 222 (1999); Howard v. Arnett's Adm'r, 294 Ky. 167, 171 S.W.2d 228 (1943); Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Carlile v. Carlile, 1992 OK 57, 830 P.2d 1369 (Okla. 1992); Gilbert v. McSpadden, 91 S.W.2d 889 (Tex. Civ. App. Waco 1936), writ refused; Kresser v. Peterson, 675 P.2d 1193 (Utah 1984); Mumpower v. Castle, 128 Va. 1, 104 S.E. 706 (1920); Butts v. Richards, 152 Wis. 318, 140 N.W. 1 (1913).

[4] U.S. v. O'Dell, 247 F.3d 655 (6th Cir. 2001) (applying Tennessee law); Oakland Bank of Commerce v. Hayes, 159 Cal. App. 2d 257, 323 P.2d 509 (1st Dist. 1958); Gonzaga University v. Masini, 42 Idaho 660, 249 P. 93 (1926); Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994); Hackett v. Hackett, 1967 OK 117, 429 P.2d 753 (Okla. 1967); Kresser v. Peterson, 675 P.2d 1193 (Utah 1984).

[5] Chaney v. Waddell, 624 So. 2d 545 (Ala. 1993); Platt v. Platt, 110 Cal. App. 327, 294 P. 73 (3d Dist. 1930); Seibert v. Seibert, 379 Ill. 470, 41 N.E.2d 544, 141 A.L.R. 299 (1942); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Gilbert v. McSpadden, 91 S.W.2d 889 (Tex. Civ. App. Waco 1936), writ refused; Kresser v. Peterson, 675 P.2d 1193 (Utah 1984).

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E. Delivery

2. Sufficiency of Delivery

§ 113. Form or ceremony

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West's Key Number Digest

West's Key Number Digest, Deeds 56(1)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

Forms

Am. Jur. Pleading and Practice Forms, Deeds § 12 (Instruction to jury—No form or ceremony necessary to constitute delivery of deed)

No particular formula of words or acts and no specific ceremony is necessary to effect a good delivery of a deed conveying title to real estate.[1] All that is requisite is that by acts, or words, or both, the grantor manifest an intention to deliver the deed.[2] A deed may be delivered by words without acts, or by acts without words, or by both words and acts.[3]

Footnotes

[1] Hartman v. Thompson, 104 Md. 389, 65 A. 117 (1906); Townsend v. Schaden, 275 Mo. 227, 204 S.W. 1076 (1918);

Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994); Hackett v. Hackett, 1967 OK 117, 429 P.2d 753 (Okla. 1967).

[2] Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994).
As to intention as controlling factor, see § 105.

[3] Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963); Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980); Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994); Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977); Hackett v. Hackett, 1967 OK 117, 429 P.2d 753 (Okla. 1967).

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E. Delivery

2. Sufficiency of Delivery

§ 114. Manual or absolute delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(1) to 56(3)

If the grantor hands the deed to the grantee personally, without saying or doing anything to qualify the significance of such act, an effective delivery is made.[1] Such direct change of physical custody with intent to deliver has been called "absolute delivery."[2] It is equally clear, however, that such transfer of the possession of the deed from the grantor to the grantee must be made with the intention of passing title[3] and must not be hampered by the reservation of any right of revocation or recall.[4] Thus, if the grantor gives the grantee the possession of the instrument but retains the right to recall it,[5] or hands it to the grantee for some special purpose,[6] there is no such delivery as will pass title. Nor is there a delivery of a deed sufficient to pass title to the grantee where the deed is given to the grantee with the intention that it become operative only on the death of the grantor and the survival of the grantee.[7]

Footnotes

1 Pass v. Stephens, 22 Ariz. 461, 198 P. 712 (1921); City Nat. Bank of Cairo, Ill., v. Anderson, 189 Ky. 487, 225 S.W. 361 (1920); Northern v. Evans, 217 Or. 605, 342 P.2d 122 (1959).

2 Pass v. Stephens, 22 Ariz. 461, 198 P. 712 (1921); City Nat. Bank of Cairo, Ill., v. Anderson, 189 Ky. 487, 225 S.W. 361 (1920); Powderly v. Aetna Cas. & Sur. Co., 72 Misc. 2d 251, 338 N.Y.S.2d 555 (Sup 1972).

3 Hartley v. Stibor, 96 Idaho 157, 525 P.2d 352 (1974); Poling v. Northup, 652 A.2d 1114 (Me. 1995); Shroyer v. Shroyer, 425 S.W.2d 214 (Mo. 1968); Hanson v. Harding, 245 Va. 424, 429 S.E.2d 20 (1993); Walls v. Click, 209 W. Va. 627, 550 S.E.2d 605 (2001).
As to the controlling effect of intention, generally, see §§ 105, 106.

4 Seibert v. Seibert, 379 Ill. 470, 41 N.E.2d 544, 141 A.L.R. 299 (1942); Shroyer v. Shroyer, 425 S.W.2d 214 (Mo. 1968).

[5] Buchwald v. Buchwald, 175 Md. 115, 199 A. 800 (1938); Gaylord v. Gaylord, 150 N.C. 222, 63 S.E. 1028 (1909); Aggers v. Blackburn, 230 S.W. 424 (Tex. Civ. App. Fort Worth 1921).

[6] § 116.

[7] Curtiss v. Ferris, 168 Colo. 480, 452 P.2d 38 (1969); Claunch v. Whyte, 73 Idaho 243, 249 P.2d 915 (1952); Lambert v. Lambert, 77 R.I. 463, 77 A.2d 325 (1950).

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E. Delivery

2. Sufficiency of Delivery

§ 115. Manual or absolute delivery—Constructive delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(1) to 56(3)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

Manual delivery of a deed by the grantor to the grantee is not essential,[1] at least as between the grantor and the grantee, although it may be deemed essential when intervening rights of others are involved.[2] Other acts, accompanied by a clear intention to pass the title from one to the other, may be equally efficacious in establishing a delivery,[3] as where the acts of the grantee show an acceptance and the purpose of the grantor is to treat the instrument as delivered.[4] Constructive delivery may not be based upon mere conjecture; therefore, in order that the court may find constructive delivery of the deed, some evidence must be presented to show that the grantor intended that title to the property should pass to the grantee at the time of execution of the deed.[5]

Footnotes

1 Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Barker v. Nelson, 306 Ark. 204, 812 S.W.2d 477 (1991); Parramore v. Parramore, 371 So. 2d 123 (Fla. 1st DCA 1978); In re Marriage of Davault, 636 S.W.2d 422 (Mo. Ct. App. S.D. 1982); Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994); Hackett v. Hackett, 1967 OK 117, 429 P.2d 753 (Okla. 1967); Smith v. Smith, 607 S.W.2d 617 (Tex. Civ. App. Waco 1980).

2 Gilliland v. Shuman, 1946 OK 192, 197 Okla. 365, 170 P.2d 549, 166 A.L.R. 850 (1946).

[3] Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Lee Hardware Co. v. Johnson, 132 Ark. 462, 201 S.W. 289 (1918); Oakland Bank of Commerce v. Hayes, 159 Cal. App. 2d 257, 323 P.2d 509 (1st Dist. 1958); Parramore v. Parramore, 371 So. 2d 123 (Fla. 1st DCA 1978); Smith v. Smith, 607 S.W.2d 617 (Tex. Civ. App. Waco 1980); Lenhart v. Desmond, 705 P.2d 338 (Wyo. 1985).

[4] Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); Atkins v. Atkins, 195 Mass. 124, 80 N.E. 806 (1907); Frederic v. Merchants & Marine Bank, 200 Miss. 755, 28 So. 2d 843 (1947).

[5] Evans v. Waddell, 689 So. 2d 23 (Ala. 1997); First Nat. Bank of Minot v. Bloom, 264 N.W.2d 208 (N.D. 1978).

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E. Delivery

2. Sufficiency of Delivery

§ 116. Conditional delivery to grantee, or turning over deed for special purpose only

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 56(2), 67

A grantor who makes a manual delivery to the grantee of a deed absolute in form, intending to part with all authority and dominion over the instrument makes an absolute delivery and title passes immediately in accordance with the terms of the deed, notwithstanding any intention or understanding that its operation be delayed until the happening of a contingency.[1] In such cases, the grantor, by the act of handing the deed to the grantee, in fact passes absolute title to the grantee; to permit the grantor to set up the condition by parol would contradict the grantor's deed.[2] Hence, parol evidence as to such a delivery or condition is inadmissible[3] although testimony is admissible to show conditions precedent which were to be fulfilled before the delivery was to be effective provided such conditions do not contradict the express terms of the written instrument.[4]

The rule that where a deed is delivered to the grantee, but upon condition, the delivery is good and the condition is a nullity, has no application where the circumstances negative any intention to deliver the deed even conditionally.[5] Where, in giving the grantee possession of a deed, the intention is merely that the grantee examine or read the deed,[6] or transmit it to a third person for a particular purpose,[7] or where a deed is given to the grantee for safekeeping[8] or to aid in the transfer of title to another prospective purchaser,[9] there is no legal delivery of the instrument which will pass title to the property. Likewise, the rule does not apply and delivery to the grantee is not effective where the deed is incomplete on its face or expresses on its face a condition which has to be fulfilled before it will become operative.[10] If the delivery of a deed is conditional, there has been no delivery until the condition has been satisfied.[11]

Footnotes

1 Paoli v. Anderson, 208 So. 2d 167 (Miss. 1968); Adams v. Little Missouri Minerals Ass'n, 143 N.W.2d 659 (N.D. 1966).

2 Paoli v. Anderson, 208 So. 2d 167 (Miss. 1968); Powderly v. Aetna Cas. & Sur. Co., 72 Misc. 2d 251, 338 N.Y.S.2d

555 (Sup 1972); Adams v. Little Missouri Minerals Ass'n, 143 N.W.2d 659 (N.D. 1966).

[3] Paoli v. Anderson, 208 So. 2d 167 (Miss. 1968); Powderly v. Aetna Cas. & Sur. Co., 72 Misc. 2d 251, 338 N.Y.S.2d 555 (Sup 1972).

[4] Powderly v. Aetna Cas. & Sur. Co., 72 Misc. 2d 251, 338 N.Y.S.2d 555 (Sup 1972).

[5] Hotaling v. Hotaling, 193 Cal. 368, 224 P. 455, 56 A.L.R. 734 (1924); Hayes v. Moffatt, 83 Mont. 214, 271 P. 433 (1928); Burke v. Burke, 141 S.C. 1, 139 S.E. 209, 56 A.L.R. 729 (1927); Bell v. Rudd, 144 Tex. 491, 191 S.W.2d 841 (1946); Spero v. Bove, 116 Vt. 76, 70 A.2d 562 (1950).

[6] Rothenberg v. Rothenberg, 378 Ill. 242, 38 N.E.2d 13 (1941); Hood v. Nichol, 236 Ky. 779, 34 S.W.2d 429 (1930); Shroyer v. Shroyer, 425 S.W.2d 214 (Mo. 1968).

[7] Ball v. Sandlin, 176 Ky. 537, 195 S.W. 1089 (1917); Bell v. Rudd, 144 Tex. 491, 191 S.W.2d 841 (1946).

[8] Morris v. Johnson, 219 Ga. 81, 132 S.E.2d 45 (1963); Ball v. Sandlin, 176 Ky. 537, 195 S.W. 1089 (1917); Buchwald v. Buchwald, 175 Md. 115, 199 A. 800 (1938).

[9] Phillips v. Farmers' Mut. Fire Ins. Co. of Kalamazoo County, 208 Mich. 84, 175 N.W. 144, 7 A.L.R. 1606 (1919).

[10] Whitney v. Dewey, 10 Idaho 633, 80 P. 1117 (1905); Haviland v. Haviland, 130 Iowa 611, 105 N.W. 354 (1905); Ball v. Sandlin, 176 Ky. 537, 195 S.W. 1089 (1917); Aggers v. Blackburn, 230 S.W. 424 (Tex. Civ. App. Fort Worth 1921).

[11] U.S. v. O'Dell, 247 F.3d 655 (6th Cir. 2001) (applying Tennessee law).

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E. Delivery

2. Sufficiency of Delivery

§ 117. Mailing to grantee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(1)

The delivery of a deed is completed when the grantor has put it beyond his or her power to reclaim, and hence placing in a mailbox a deed in a stamped envelope addressed to the grantee operates as a delivery.[1] If the grantee denies receipt, evidence that the deed has been so mailed and has not been returned to the grantor is sufficient to establish the fact of delivery.[2] Where a deed is mailed by the grantor shortly before the grantor's death, the fact that the grantee does not receive it until after the grantor's death is immaterial.[3]

Footnotes

1 Bingham v. Weber, 197 Or. 501, 254 P.2d 219 (1953).

2 Lynch v. Johnson, 171 N.C. 611, 89 S.E. 61 (1916).

3 Taylor v. Sanford, 108 Tex. 340, 193 S.W. 661, 5 A.L.R. 1660 (1917).

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E. Delivery

2. Sufficiency of Delivery

§ 118. Recording as delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(1), 59(1), 208(4)

While the fact that a deed is on record is prima facie evidence of delivery,[1] the deposit for recording of a deed by the grantor or the grantor's agent and the actual recording thereof do not constitute delivery as a matter of law[2] for the question remains whether, by so doing, the grantor intended to deliver the deed.[3] It is the intent in depositing the deed for record, not the fact that it was recorded, that has to be considered in determining from all the evidence whether the deposit was an effectual delivery.[4]

Because the intention of the parties is determinative with regard to whether a deed has been delivered,[5] delivery of the deed by the grantor, with the grantee's consent or subsequent acquiescence,[6] to the proper officer for recording, with the intention that thereby it will pass the title, constitutes an effective delivery.[7]

Where the grantor intended to deliver the deed by depositing it for record, the deed becomes operative immediately and delivery is complete, so that a grantor who receives the deed after it has been recorded does so as the grantee's agent, and the constructive delivery to the grantee is not affected thereby.[8]

Footnotes

1 § 141.

2 McGuire v. Crockett, 112 Colo. 552, 151 P.2d 326 (1944); Ehlers v. Seip, 136 Neb. 722, 287 N.W. 202 (1939); Morgan v. Morgan, 82 Vt. 243, 73 A. 24 (1909).

3 McGuire v. Crockett, 112 Colo. 552, 151 P.2d 326 (1944); Ehlers v. Seip, 136 Neb. 722, 287 N.W. 202 (1939); Morgan v. Morgan, 82 Vt. 243, 73 A. 24 (1909).

[4] McGuire v. Clark, 85 Neb. 102, 122 N.W. 675 (1909); O'Neal v. Turner, 1946 OK 251, 197 Okla. 527, 172 P.2d 1013 (1946); Churchill & Alden Co. v. Ramsey, 48 S.D. 237, 203 N.W. 502 (1925), opinion adhered to on reh'g, 50 S.D. 73, 208 N.W. 406 (1926).

[5] § 105.

[6] Wilbourn v. Wilbourn, 204 Miss. 206, 37 So. 2d 775 (1948).

[7] Best v. Paul, 101 Cal. App. 497, 281 P. 1089 (1st Dist. 1929); Bellin v. Bloom, 217 Ind. 656, 28 N.E.2d 53 (1940); Haynes v. Barker, 239 S.W.2d 996 (Ky. 1951); Exsted v. Exsted, 202 Minn. 521, 279 N.W. 554, 117 A.L.R. 599 (1938); O'Neal v. Turner, 1946 OK 251, 197 Okla. 527, 172 P.2d 1013 (1946); West v. First Baptist Church of Taft, 123 Tex. 388, 71 S.W.2d 1090 (1934); Whiting v. Hoglund, 127 Wis. 135, 106 N.W. 391 (1906).
Recordation of the deed at the grantor's knowledge and direction evidences a valid delivery of the deed to the grantee which encompasses the requisite intent of the grantor to pass title. Bagley v. Thomason, 149 Idaho 799, 241 P.3d 972 (2010).

[8] Petre v. Petre, 69 Ind. App. 57, 121 N.E. 285 (1918); Whiting v. Hoglund, 127 Wis. 135, 106 N.W. 391 (1906).

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E. Delivery

2. Sufficiency of Delivery

§ 119. Delivery to third person

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 58(1) to 58(4)

The delivery of a deed to a third person with instructions to pass it on to the grantee, and without any reservation by the grantor of a right to recall it, is sufficient in law and effects a complete transfer of the title to the property.[1] Such a delivery passes title notwithstanding that the deed does not actually reach the grantee until after the grantor's death.[2]

The grantor may deliver the deed to the grantor's own agent[3] so long as the grantor intends to relinquish control.[4] However, if the grantor asks an agent to retain the deed in the agent's files until the grantor calls for it, there is no effective delivery of the deed to the grantee.[5]

When, however, a claim to title rests upon the delivery of a deed to a third person, it must appear that the grantor parted with all dominion and control over the instrument, intending it to take effect and pass title as a present transfer.[6] An instrument delivered to a third person, subject to recall before delivery to the grantee, is not effectual to pass title.[7] When a deed is placed in the hands of a third person to hold until a certain act is performed, no title passes until that act is performed.[8] There is no delivery where the deed is not given to the grantee during the grantor's lifetime but is given to a third party for safekeeping.[9]

Footnotes

1 Pacific Royalty Co. v. Williams, 227 F.2d 49 (10th Cir. 1955) (applying New Mexico law); Smith v. Smith, 820 So. 2d 64 (Ala. 2001); Brown v. Hutch, 156 So. 2d 683 (Fla. 2d DCA 1963); Casey v. Wachovia Bank, N.A., 273 Ga. 140, 539 S.E.2d 503 (2000); Matheson v. Matheson, 139 Iowa 511, 117 N.W. 755 (1908); Seibel v. Higham, 216 Mo. 121, 115 S.W. 987 (1908); Carlile v. Carlile, 1992 OK 57, 830 P.2d 1369 (Okla. 1992); Larson v. Johnson, 53 S.D. 299, 220 N.W. 500 (1928).

2 §§ 124 to 127.

[3] Poling v. Northup, 652 A.2d 1114 (Me. 1995).

[4] Poling v. Northup, 652 A.2d 1114 (Me. 1995).

[5] Chapman v. Chapman, 473 So. 2d 467 (Miss. 1985).

[6] Sky Harbor, Inc. v. Jenner, 164 Colo. 470, 435 P.2d 894 (1968); Osborne v. Eslinger, 155 Ind. 351, 58 N.E. 439 (1900); Silbernagel v. Silbernagel, 79 N.D. 275, 55 N.W.2d 713 (1952).

[7] Culver v. Carroll, 175 Ala. 469, 57 So. 767 (1911).

[8] Wandler v. Lewis, 1997 SD 98, 567 N.W.2d 377 (S.D. 1997).

[9] Evans v. Waddell, 689 So. 2d 23 (Ala. 1997).

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E. Delivery

2. Sufficiency of Delivery

§ 120. Delivery by fewer than all grantors

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 57

A delivery is incomplete where made by some of the parties to a deed which shows on its face that it was intended to be jointly executed so that all should be bound by its covenants.[1] In such a case, the delivery is valid as to the delivery grantor but invalid as to the cograntors.[2] The delivery of a deed by a surviving grantor after the death of one of the cograntors is wholly inoperative to affect the title of the latter.[3]

Footnotes

1 Wilson v. McDaniel, 250 Ark. 316, 465 S.W.2d 100 (1971).

2 Creighton v. Elgin, 387 Ill. 592, 56 N.E.2d 825, 162 A.L.R. 883 (1944); Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963).

3 Creighton v. Elgin, 387 Ill. 592, 56 N.E.2d 825, 162 A.L.R. 883 (1944).

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Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

IX. Execution, Delivery, and Acceptance

E. Delivery

2. Sufficiency of Delivery

§ 121. Delivery to cograntee or life tenant

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 57

In cases of deeds purporting to convey title to several grantees, the delivery of the instrument to one of the grantees named therein who receives the deed from the grantor is generally regarded, in the absence of evidence to the contrary, as a delivery in favor of all the grantees.[1] A delivery is not effected by placing the deed in the hands of one grantee without any intention of delivering it.[2]

Where a deed is made to two cograntees but not delivered until after the death of one of them, it operates as a conveyance to the surviving grantee only and of such interest as he would have had if his cograntee had survived the delivery.[3]

Delivery of a deed to a life tenant is a sufficient delivery for the benefit of the remaindermen.[4]

Footnotes

1 Sanders v. Crabtree, 44 Cal. App. 2d 602, 112 P.2d 923 (1st Dist. 1941); La Flamme v. La Flamme, 341 Mass. 460, 170 N.E.2d 467 (1960); Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980); Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977); Controlled Receivables, Inc. v. Harman, 17 Utah 2d 420, 413 P.2d 807 (1966).
As to the presumption of acceptance when a deed is delivered to fewer than all the grantees, see § 155.

2 Hild v. Hild, 129 Iowa 649, 106 N.W. 159 (1906).

3 Hopkins v. Slusher, 266 Ky. 300, 98 S.W.2d 932, 108 A.L.R. 662 (1936).

4 Underwood v. Gillespie, 594 S.W.2d 372 (Mo. Ct. App. S.D. 1980).

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IX. Execution, Delivery, and Acceptance

E. Delivery

2. Sufficiency of Delivery

§ 122. Grantor's possession or custody of instrument after delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(3)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

In all cases where a deed is found in the grantor's possession, the question is, did the grantor have the right to retain the deed as against the grantee?[1] While the grantor's possession of a deed raises a presumption that the deed was never delivered,[2] it may be shown by evidence that a delivery was consummated; and if this fact is made to appear, the deed is operative notwithstanding the grantor's subsequent custody of it.[3] The mere fact that the grantor's continued possession of the deed gives the grantor the physical opportunity to destroy the deed is immaterial because the grantor has not the right to do so; and if the grantor destroys it, the deed would nevertheless be operative by reason of the prior constructive delivery.[4] A complete delivery is not rendered ineffectual by placing the deed in a safe or safe-deposit box to which both the grantor and the grantee have access.[5]

On the other hand, the dominion over the instrument must pass from the grantor with the intent that it pass to the grantee if the latter will accept it.[6] If the deed remains within the grantor's control and liable to be recalled, there is no delivery, notwithstanding the grantor has parted with its immediate possession.[7]

Footnotes

[1] Pollock v. Brown, 569 S.W.2d 724 (Mo. 1978); In re McKitterick's Estate, 94 Ohio App. 373, 52 Ohio Op. 35, 115 N.E.2d 163 (4th Dist. Jackson County 1953); Northern v. Evans, 217 Or. 605, 342 P.2d 122 (1959); Whiting v. Hoglund, 127 Wis. 135, 106 N.W. 391 (1906).

[2] § 137.

[3] Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980); Smith v. Smith, 607 S.W.2d 617 (Tex. Civ. App. Waco 1980).

[4] Mumpower v. Castle, 128 Va. 1, 104 S.E. 706 (1920).

[5] Gruber v. Palmer, 230 Iowa 587, 298 N.W. 926 (1941); Slagle v. Callaway, 333 Mo. 1055, 64 S.W.2d 923, 90 A.L.R. 1366 (1933).

[6] Platt v. Platt, 110 Cal. App. 327, 294 P. 73 (3d Dist. 1930); Gonzaga University v. Masini, 42 Idaho 660, 249 P. 93 (1926); Mumpower v. Castle, 128 Va. 1, 104 S.E. 706 (1920).

[7] Platt v. Platt, 110 Cal. App. 327, 294 P. 73 (3d Dist. 1930); Gonzaga University v. Masini, 42 Idaho 660, 249 P. 93 (1926); Kula v. Kula, 149 Neb. 347, 31 N.W.2d 96 (1948).

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IX. Execution, Delivery, and Acceptance

E. Delivery

3. Delivery After Grantor's Death

§ 123. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(6)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

Valid delivery of a deed requires that it pass beyond the control or dominion of the grantor.[1] Where a grantor retains possession and control until death of a deed which the grantor executes without doing anything to indicate an intention to deliver it, it is void for want of a delivery.[2] Where a deed is retained by the grantor, without delivery of it to anyone, with the intent that it not operate until his or her death, no disposition of the property is made thereby.[3] If a deed is executed for delivery only after the grantor's death, it is merely a will, regardless of its name, and is valid only when executed in the form and manner provided by law for the execution of wills.[4]

Footnotes

1 § 112.

2 Chaney v. Waddell, 624 So. 2d 545 (Ala. 1993); Van Huss v. Wooten, 208 Ark. 332, 186 S.W.2d 174 (1945); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Butts v. Richards, 152 Wis. 318, 140 N.W. 1 (1913).
As to the effect of a delivery by a surviving cograntor, see § 120.

3 Chaney v. Waddell, 624 So. 2d 545 (Ala. 1993); Childs v. Mitchell, 204 Ga. 542, 50 S.E.2d 216 (1948); Matter of

Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Mumpower v. Castle, 128 Va. 1, 104 S.E. 706 (1920).

[4] Henneberry v. Henneberry, 164 Cal. App. 2d 125, 330 P.2d 250 (1st Dist. 1958); Childs v. Mitchell, 204 Ga. 542, 50 S.E.2d 216 (1948); Atchison v. Atchison, 1946 OK 358, 198 Okla. 98, 175 P.2d 309 (1946).
As to construction of an instrument as a deed or will, see §§ 212 to 223.

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E. Delivery

3. Delivery After Grantor's Death

§ 124. Deed lodged with third person for delivery on grantor's death

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(6), 58(1), 61

Forms

Am. Jur. Pleading and Practice Forms, Deeds § 7 (Complaint, petition, or declaration— For cancellation of deed—Allegation—Wrongful delivery of deed by escrow agent after grantor's death)

An effective legal delivery of a deed may be made by the grantor's manual delivery of the deed to a third person, with directions to the latter to hold the deed during the lifetime of the grantor and upon the latter's death to deliver it to the grantee, intending at the time of the delivery to the custodian to part forever with all right or power thereafter to repossess, retake, or control the deed. Such a delivery is effectual to convey title to the grantee upon the grantor's death, even though the grantee is not aware of the delivery until after the grantor's death,[1] and the grantor cannot, after making such delivery to a third person, recall, revoke, or modify the deed without the consent of the grantee.[2] Any difficulty arising from the principle that an agent's authority is terminated by the death of the principal[3] is overcome, and the common-law rule that a deed must be delivered in the lifetime of the grantor[4] is satisfied, by the conditional delivery, as in an escrow.[5]

Although the delivery of a deed to a third person, to be by such third person delivered to the grantee at the death of the grantor, may be a good delivery, it will not preclude the grantor and grantee from withdrawing the deed by common consent, thereby preventing its final delivery through the medium of the third person.[6]

Footnotes

[1] Chandler v. Chandler, 409 So. 2d 780 (Ala. 1981); Pizel v. Pizel, 7 Kan. App. 2d 388, 643 P.2d 1094 (1982); Taylor v. Welch, 609 So. 2d 1225 (Miss. 1992); In re Marriage of Davault, 636 S.W.2d 422 (Mo. Ct. App. S.D. 1982); Estate of O'Brien v. Robinson, 109 Wash. 2d 913, 749 P.2d 154, 81 A.L.R.4th 1111 (1988).

[2] Chandler v. Chandler, 409 So. 2d 780 (Ala. 1981); Cell v. Drake, 61 Idaho 299, 100 P.2d 949 (1940); Dickason v. Dickason, 219 Ind. 683, 40 N.E.2d 965 (1942); Potts v. Patterson, 355 Mo. 154, 195 S.W.2d 454 (1946); Silbernagel v. Silbernagel, 79 N.D. 275, 55 N.W.2d 713 (1952).

[3] Am. Jur. 2d, Agency § 52.

[4] Cooper v. Littleton, 197 Ga. 381, 29 S.E.2d 606 (1944); Jolly v. Graham, 222 Ill. 550, 78 N.E. 919 (1906); Butts v. Richards, 152 Wis. 318, 140 N.W. 1 (1913).

[5] Nolan v. Otney, 75 Kan. 311, 89 P. 690 (1907).

[6] Peterman v. Peterman, 286 Mo. 375, 228 S.W. 1062 (1921).

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E. Delivery

3. Delivery After Grantor's Death

§ 125. Deed lodged with third person for delivery on grantor's death—Intention of grantor as controlling; manifestation of intention

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(2), 56(6)

Upon the question of the delivery of a deed placed in the custody of a third person with instructions to deliver it upon the grantor's death, the intention of the grantor is controlling.[1] The intention of the grantor at the time of turning over custody of the deed to the third person controls as to whether an irrevocable delivery has been made, and once the deed takes effect as of the date of delivery to the third person, the subsequent conduct or remarks of the grantor cannot operate retroactively to change that effect.[2] The grantor's intent may lawfully be expressed to the custodian of the deed either orally[3] or in writing;[4] or by a condition in the deed;[5] or by the grantor's acts and conduct at the time of, or subsequent to, delivery.[6] The grantor shows no intent to part with dominion and control[7] of the deed where the understanding is that the custodian will return the deed if the grantor should recover from a present illness,[8] or if the grantee should predecease the grantor,[9] or where the grantor instructs the custodian to deliver the deed if the grantor has made no other disposition of the property.[10]

Footnotes

1 Chandler v. Chandler, 409 So. 2d 780 (Ala. 1981); Pizel v. Pizel, 7 Kan. App. 2d 388, 643 P.2d 1094 (1982).

2 Parramore v. Parramore, 371 So. 2d 123 (Fla. 1st DCA 1978); Ritchie v. Davis, 26 Wis. 2d 636, 133 N.W.2d 312 (1965).

3 Chandler v. Chandler, 409 So. 2d 780 (Ala. 1981); Kokomo Trust Co. v. Hiller, 67 Ind. App. 611, 116 N.E. 332 (1917).

4 Brown v. Hutch, 156 So. 2d 683 (Fla. 2d DCA 1963).

5 Culy v. Upham, 135 Mich. 131, 97 N.W. 405 (1903).

6 Kokomo Trust Co. v. Hiller, 67 Ind. App. 611, 116 N.E. 332 (1917); Kirby v. Hulette, 174 Ky. 257, 192 S.W. 63 (1917).

7 § 126.

8 Seeley v. Curts, 180 Ala. 445, 61 So. 807 (1913).

9 Atchison v. Atchison, 1946 OK 358, 198 Okla. 98, 175 P.2d 309 (1946); Masquart v. Dick, 210 Or. 459, 310 P.2d 742 (1957).

10 Brown v. Hutch, 156 So. 2d 683 (Fla. 2d DCA 1963).

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E. Delivery

3. Delivery After Grantor's Death

§ 126. Deed lodged with third person for delivery on grantor's death—Grantor's retention of dominion and control

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(6), 58(4)

In order to give effect, as a conveyance, to a deed the custody of which the grantor has entrusted to a third person with instructions to deliver it to the grantee upon the grantor's death, it must appear that the grantor parted with the possession of the instrument with the intention that it become operative as a deed[1] for the benefit of the grantee ultimately, that the grantor in some way expressed an intention to that effect,[2] and that the grantor parted with all dominion and control over the instrument.[3] Where the grantor divests himself or herself of possession of, and dominion and control over, a deed which the grantor has duly executed by handing it to a person with instructions to deliver it to the grantee upon the grantor's death, the delivery is sufficient in law;[4] and the third person then holds the deed in trust for the grantee, to be delivered to the grantee when the grantor dies.[5]

Footnotes

1 § 119.

2 Grilley v. Atkins, 78 Conn. 380, 62 A. 337 (1905); Loosen v. Stangl, 1933 OK 282, 163 Okla. 231, 22 P.2d 364 (1933); In re Miller's Estate, 129 Wash. 211, 224 P. 607 (1924).

3 Moore v. Trott, 156 Cal. 353, 104 P. 578 (1909); Orris v. Whipple, 224 Iowa 1157, 280 N.W. 617, 129 A.L.R. 1 (1938); Hush v. Reeder, 150 Kan. 567, 95 P.2d 313 (1939); Atchison v. Atchison, 1946 OK 358, 198 Okla. 98, 175 P.2d 309 (1946); Miller v. Proctor, 24 Tenn. App. 439, 145 S.W.2d 807 (1940); In re Miller's Estate, 129 Wash. 211, 224 P. 607 (1924).

4 Cell v. Drake, 61 Idaho 299, 100 P.2d 949 (1940); Meairs v. Kruckenberg, 171 Kan. 450, 233 P.2d 472, 31 A.L.R.2d 525 (1951); Hagen v. Hagen, 136 Minn. 121, 161 N.W. 380 (1917); Blackiston v. Russell, 328 Mo. 1164, 44 S.W.2d

22 (1931); Snodgrass v. Snodgrass, 1924 OK 597, 107 Okla. 140, 231 P. 237, 52 A.L.R. 1213 (1924); Eckert v. Stewart, 207 S.W. 317 (Tex. Civ. App. Amarillo 1918), writ refused, (Mar. 19, 1919).

5 Culver v. Carroll, 175 Ala. 469, 57 So. 767 (1911); Kokomo Trust Co. v. Hiller, 67 Ind. App. 611, 116 N.E. 332 (1917).

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E. Delivery

3. Delivery After Grantor's Death

§ 127. Deed lodged with third person for delivery on grantor's death—Delivery as question of law or fact

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(6), 61

The intention of the grantor in making delivery of a deed is usually a question of fact to be solved in the light of all the circumstances surrounding the transaction,[1] and this is especially true where the deed is delivered to a third person for the grantee, to take effect upon the grantor's death.[2] Where a deed is delivered to a third person with written instructions as to its delivery to the grantee after the death of the grantor, the question of delivery presents a pure question of law.[3]

Footnotes

1 § 111.

2 Fine v. Lasater, 110 Ark. 425, 161 S.W. 1147 (1913); Grilley v. Atkins, 78 Conn. 380, 62 A. 337 (1905); Emmons v. Harding, 162 Ind. 154, 70 N.E. 142 (1904); Norton v. Norton, 105 Or. 651, 209 P. 1048 (1922).

3 Moore v. Trott, 156 Cal. 353, 104 P. 578 (1909); Drinkwater v. Hoffeditz, 157 Wash. 305, 288 P. 919 (1930).

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3. Delivery After Grantor's Death

§ 128. Intention to make present transfer of title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 56(6)

Not only must the grantor have intended to put reclamation of the deed beyond his or her power[1] but also, technically at least, the grantor must have intended that title to the property immediately pass to the grantee.[2]

Footnotes

1 § 112.

2 Chaney v. Waddell, 624 So. 2d 545 (Ala. 1993); Williams v. Kidd, 170 Cal. 631, 151 P. 1 (1915); Cooper v. Littleton, 197 Ga. 381, 29 S.E.2d 606 (1944); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993).

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IX. Execution, Delivery, and Acceptance

E. Delivery

4. Evidence Concerning Delivery

a. Burden of Proof

§ 129. Delivery or nondelivery, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(1), 194(2)

A party claiming under a deed is ordinarily bound to prove its execution and delivery.[1]

Where an issue is raised as to the nondelivery of a deed, the party raising, and having the affirmative of, that issue has the burden of proving it.[2] Such party must show the facts surrounding the transaction and furnish some evidence of an intention on the part of the grantor inconsistent with the purpose to deliver the contract.[3]

While one attacking the delivery of a deed turned over to the grantee after the grantor's death has the burden of proving lack of delivery, the burden is on the one attempting to show a delivery where the deed was never turned over to the grantee but remained in the possession of the grantor and of the grantor's estate after the grantor's death.[4] The burden is a heavy one when the deed has been retained by the grantor, for presumptively there was in that case no delivery.[5]

Footnotes

1 Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980); Miller v. Miller, 121 Mont. 55, 190 P.2d 72 (1948); Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994); Witham v. Witham, 156 Or. 59, 66 P.2d 281, 110 A.L.R. 253 (1937).

2 Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963); Shroyer v. Shroyer, 425 S.W.2d 214 (Mo. 1968); Rametta v. Kazlo, 68 A.D.2d 579, 418 N.Y.S.2d 113 (2d Dep't 1979); Hackett v. Hackett, 1967 OK 117, 429 P.2d 753 (Okla. 1967).
As to the degree of proof required to overcome a presumption of delivery, see § 148.

[3] Vernon v. Vernon, 211 Ky. 196, 277 S.W. 248 (1925).

[4] Orris v. Whipple, 224 Iowa 1157, 280 N.W. 617, 129 A.L.R. 1 (1938).

[5] Corkins v. Corkins, 358 Mich. 691, 101 N.W.2d 362, 87 A.L.R.2d 783 (1960); Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980).

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E. Delivery

4. Evidence Concerning Delivery

a. Burden of Proof

§ 130. Date of delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(3)

The party alleging that a deed was not executed and delivered upon the date it bears carries the burden of proving that fact.[1] Evidence to overcome the presumption that a deed was delivered on the date it bears, rather than on the date it was acknowledged, must be clear and convincing.[2] The mere suggestion of fraud or falsity as to the date of the execution of a deed does not put upon the party producing the deed the burden of proving that it was actually made upon the day of its date.[3]

Footnotes

1 Berigan v. Berrigan, 413 Ill. 204, 108 N.E.2d 438 (1952); Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963).

2 Adams v. Little Missouri Minerals Ass'n, 143 N.W.2d 659 (N.D. 1966).

3 Nelson v. Brown, 164 Ala. 397, 51 So. 360 (1910).

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E. Delivery

4. Evidence Concerning Delivery

b. Presumptions and Inferences, in General

§ 131. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(1)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

A valid delivery of a deed effective to convey title to real property may be made without a manual transfer of the instrument[1] and without resort to any particular act or form of words.[2] The controlling factor is the intention of the parties, especially the grantor, to make delivery,[3] and this intention may be inferred from their words and acts and from the circumstances preceding, attending, and subsequent to the execution of the instrument.[4] The delivery of a deed will be presumed, in the absence of direct evidence of the fact, from the concurrent acts of the parties recognizing a transfer of the title.[5] One of the most persuasive facts is the possession of the deed or of the premises by the grantee.[6] Delivery cannot, however, be presumed from the mere fact that the grantor has signed the instrument, without any further circumstances indicative of the grantor's intention.[7]

Footnotes

1 § 114.

2 § 113.

[3] § 105.

[4] Kelly v. Bank of America Nat. Trust & Savings Ass'n, 112 Cal. App. 2d 388, 246 P.2d 92, 34 A.L.R.2d 578 (4th Dist. 1952); Frederic v. Merchants & Marine Bank, 200 Miss. 755, 28 So. 2d 843 (1947); Blackiston v. Russell, 328 Mo. 1164, 44 S.W.2d 22 (1931); Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994); Dowell v. McNeill, 1957 OK 198, 315 P.2d 771 (Okla. 1957); Hayes v. Pennock, 192 S.W.2d 169 (Tex. Civ. App. Beaumont 1945), writ refused n.r.e.

[5] Kirby v. Hulette, 174 Ky. 257, 192 S.W. 63 (1917).

[6] §§ 136, 139.

[7] Erbach v. Brauer, 188 Wis. 312, 206 N.W. 62 (1925).

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E. Delivery

4. Evidence Concerning Delivery

b. Presumptions and Inferences, in General

§ 132. Voluntary settlements

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(1), 208(1)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

Delivery is just as essential to the validity of deeds conveying property between members of a family as it is in the case of any other deeds.[1] The law makes stronger presumptions in favor of delivery where the deed is a voluntary settlement than in an ordinary case of bargain and sale,[2] and the intent of the grantor to pass title presently, where such is satisfactorily shown, is given great weight.[3] In the case of a voluntary settlement where the grantee is a member of the family or near relative of the grantor, a presumption arises that there was a delivery of the deed.[4] In such case, the mere fact that the grantor retains possession of the deed is not conclusive against its validity if there is no circumstance other than its retention to show that the deed was not intended to be absolute.[5] However, even in the case of a voluntary settlement, there must be some evidence of delivery.[6]

Footnotes

[1] Culver v. Carroll, 175 Ala. 469, 57 So. 767 (1911); Osborne v. Eslinger, 155 Ind. 351, 58 N.E. 439 (1900); Enright v. Bannister, 195 Va. 76, 77 S.E.2d 377 (1953).

[2] McGhee v. Forrester, 15 Ill. 2d 162, 154 N.E.2d 230 (1958); White v. Hogge, 291 S.W.2d 22 (Ky. 1956); Baker v. Baker, 363 Mo. 318, 251 S.W.2d 31, 33 A.L.R.2d 1431 (1952); Brewer v. Brewer, 199 Va. 753, 102 S.E.2d 303 (1958).

[3] Hilliard v. Hilliard, 240 Iowa 1394, 39 N.W.2d 624 (1949); Rametta v. Kazlo, 68 A.D.2d 579, 418 N.Y.S.2d 113 (2d Dep't 1979).

[4] Fonda v. Miller, 411 Ill. 74, 103 N.E.2d 98 (1951).

[5] Zilvitis v. Szczudlo, 409 Ill. 252, 99 N.E.2d 124 (1951); Ferrell v. Stinson, 233 Iowa 1331, 11 N.W.2d 701 (1943).

[6] Brewer v. Brewer, 199 Va. 753, 102 S.E.2d 303 (1958).

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E. Delivery

4. Evidence Concerning Delivery

b. Presumptions and Inferences, in General

§ 133. Deed to minor

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 194(1), 208(1)

Facts and circumstances indicating an intention on the part of the grantor to part with title and vest it in a minor grantee will establish a legal delivery of a deed conveying land to such minor, though no actual delivery is shown,[1] especially where the grantor is the parent of the grantee so that the grantor may be assumed to have retained the deed as the child's guardian.[2]

Where a deed conveying land to a minor grantee is delivered to the minor's mother with no specific directions, there is a presumption of delivery to the child.[3] Where a deed conveying land to a minor is delivered to the mother for the minor, the law presumes an acceptance for the benefit of the child, and there is thus a presumption of a valid delivery of the deed.[4]

The presumption in favor of delivery where the grantee is a minor is much stronger than in the case of an adult grantee,[5] especially where the deed is executed by the parent,[6] because the minor is incapable of doing any act in regard to the deed which the minor cannot avoid on reaching majority, and it is the duty of the parent, as the minor's natural guardian, to accept and preserve the deed for the minor.[7] Because of the strong presumption in favor of the delivery of a deed to a minor grantee, the delivery of such a deed to, or its possession by, a third person may support a presumption of delivery to the minor grantee.[8]

Footnotes

1 Blankenship v. Hall, 233 Ill. 116, 84 N.E. 192 (1908); Matson v. Johnson, 48 Wash. 256, 93 P. 324 (1908).

2 Controlled Receivables, Inc. v. Harman, 17 Utah 2d 420, 413 P.2d 807 (1966).

[3] White v. Hogge, 291 S.W.2d 22 (Ky. 1956).

[4] Pittmon v. Flowers, 131 Ky. 804, 115 S.W. 786 (1909).

[5] Blankenship v. Hall, 233 Ill. 116, 84 N.E. 192 (1908); White v. Hogge, 291 S.W.2d 22 (Ky. 1956).

[6] Abbott v. Abbott, 189 Ill. 488, 59 N.E. 958 (1901); White v. Hogge, 291 S.W.2d 22 (Ky. 1956).

[7] Pentico v. Hays, 75 Kan. 76, 88 P. 738 (1907).

[8] Pittmon v. Flowers, 131 Ky. 804, 115 S.W. 786 (1909); Couch v. Hoover, 18 Tenn. App. 523, 79 S.W.2d 807 (1934).

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b. Presumptions and Inferences, in General

§ 134. Presumptions as to date of delivery

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 194(3)

It is the general rule, declared by statute in some jurisdictions,[1] that in the absence of evidence to the contrary, a deed is presumed to have been delivered at the date of the instrument.[2]

Some courts hold that a deed is presumed to have been delivered on its date, notwithstanding the certificate of acknowledgment bears a later date.[3] Other courts hold that it will be presumed, in the absence of other evidence, that the delivery was on the date of the acknowledgment,[4] at least when it is found in the possession of the grantee;[5] or that the deed was delivered not later than the day of acknowledgment;[6] or, as it is sometimes expressed, that the deed was delivered at least as early as the date of acknowledgment.[7]

Footnotes

1 Adams v. Little Missouri Minerals Ass'n, 143 N.W.2d 659 (N.D. 1966).

2 Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963); M & T Real Estate Trust v. Doyle, 20 N.Y.3d 563, 964 N.Y.S.2d 480, 987 N.E.2d 257 (2013); Williams v. North Carolina State Bd. of Ed., 284 N.C. 588, 201 S.E.2d 889 (1974); Adams v. Little Missouri Minerals Ass'n, 143 N.W.2d 659 (N.D. 1966).

3 Dulin v. Ohio River R. Co., 73 W. Va. 166, 80 S.E. 145 (1913).

4 Breshears v. Breshears, 360 Mo. 1057, 232 S.W.2d 460 (1950).

5 Crabtree v. Crabtree, 136 Iowa 430, 113 N.W. 923 (1907).

[6] Worthington v. Koss, 72 Idaho 132, 237 P.2d 1050 (1951).

[7] Good v. Williams, 81 Kan. 388, 105 P. 433 (1909).

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§ 135. Presumptions as to date of delivery—Rebuttal

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(3)

The presumption of delivery on the date of the deed[1] is not conclusive but may be rebutted or neutralized[2] by opposing evidence.[3]

The evidence to overcome the presumption must be clear and convincing.[4]

Footnotes

1 § 134.

2 Williams v. North Carolina State Bd. of Ed., 284 N.C. 588, 201 S.E.2d 889 (1974).

3 M & T Real Estate Trust v. Doyle, 20 N.Y.3d 563, 964 N.Y.S.2d 480, 987 N.E.2d 257 (2013).

4 Adams v. Little Missouri Minerals Ass'n, 143 N.W.2d 659 (N.D. 1966).

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4. Evidence Concerning Delivery

c. Particular Circumstances from Which Presumptions and Inferences May Be Made

§ 136. Possession of deed by grantee or person claiming under grantee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(2)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

A strong[1] presumption of delivery of a deed arises from its possession by the grantee or one claiming under the grantee.[2]

The presumption of delivery arising from possession of the deed by the grantee or one holding under the grantee may be rebutted only by clear and convincing evidence,[3] such as by showing that there was in fact no delivery,[4] as where such possession was gained by trick or artifice or without the knowledge or consent of the grantor[5] or by showing circumstances inconsistent with such presumption.[6] The presumption is rebutted by a showing that the grantee came into possession of the deed after the death of the grantor and that the grantee had not previously known of its existence.[7] Similarly, the presumption is destroyed by a showing that the deed was not in fact manually delivered to the grantee by the grantor but by a third person.[8]

Footnotes

1 In re Pappuleas' Estate, 5 Wash. App. 826, 490 P.2d 1340 (Div. 1 1971).

2 Washington v. Washington, 2013 Ark. App. 54, 2013 WL 355972 (2013); Hartley v. Stibor, 96 Idaho 157, 525 P.2d

352 (1974); Paoli v. Anderson, 208 So. 2d 167 (Miss. 1968); Shroyer v. Shroyer, 425 S.W.2d 214 (Mo. 1968); Goddard v. Goddard, 192 Ohio App. 3d 718, 2011-Ohio-680, 950 N.E.2d 567 (4th Dist. Scioto County 2011); Stockwell v. Stockwell, 2010 SD 79, 790 N.W.2d 52 (S.D. 2010).

[3] Washington v. Washington, 2013 Ark. App. 54, 2013 WL 355972 (2013).

[4] Barmore v. Perrone, 145 Idaho 340, 179 P.3d 303 (2008) (stating that such proof may be by parol evidence); Paoli v. Anderson, 208 So. 2d 167 (Miss. 1968).
As to the degree of proof required to overcome the presumption of delivery, see § 148.

[5] Evans v. Evans, 44 N.M. 223, 101 P.2d 179 (1940).

[6] Moore v. Trott, 156 Cal. 353, 104 P. 578 (1909); Sears v. Scranton Trust Co., 228 Pa. 126, 77 A. 423 (1910); Burke v. Burke, 141 S.C. 1, 139 S.E. 209, 56 A.L.R. 729 (1927).

[7] Williams v. Kidd, 170 Cal. 631, 151 P. 1 (1915).

[8] Huber v. Williams, 338 Ill. 313, 170 N.E. 195 (1930); Lewis v. Tinsley, 66 S.D. 648, 287 N.W. 507, 124 A.L.R. 459 (1939).

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§ 137. Possession of deed by grantor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(2)

A deed in the possession of the grantor is presumed never to have been delivered,[1] especially where it was in the grantor's possession and under the grantor's control at the time of the grantor's death,[2] and was unrecorded although acknowledged.[3] However, although the grantor had possession of the deed at death, other facts may be shown which may rebut the presumption of nondelivery arising from such possession,[4] such as direct evidence of a manual delivery.[5]

The fact of possession of the deed by the grantor after it has been duly recorded is not entitled to much consideration as rebutting the presumption of delivery arising in such a case,[6] especially where the grantees are minors and members of the grantor's family; at least, it does not as a matter of law rebut the presumption,[7] and it has even been said that the possession is of no weight as evidence against the presumed delivery.[8] That a deed of voluntary conveyance was placed on record is a strong indication of its delivery[9] although not conclusive.[10]

Footnotes

1 Corkins v. Corkins, 358 Mich. 691, 101 N.W.2d 362, 87 A.L.R.2d 783 (1960); Witham v. Witham, 156 Or. 59, 66 P.2d 281, 110 A.L.R. 253 (1937).

2 Howard v. Arnett's Adm'r, 294 Ky. 167, 171 S.W.2d 228 (1943); Shroyer v. Shroyer, 425 S.W.2d 214 (Mo. 1968).

3 Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980).

4 Cribbs v. Walker, 74 Ark. 104, 85 S.W. 244 (1905); Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980).

[5] Hilliard v. Hilliard, 240 Iowa 1394, 39 N.W.2d 624 (1949); Upton v. Merriman, 116 Minn. 358, 133 N.W. 977 (1911); In re McKitterick's Estate, 94 Ohio App. 373, 52 Ohio Op. 35, 115 N.E.2d 163 (4th Dist. Jackson County 1953).

[6] Petre v. Petre, 69 Ind. App. 57, 121 N.E. 285 (1918).

[7] Creighton v. Roe, 218 Ill. 619, 75 N.E. 1073 (1905); Controlled Receivables, Inc. v. Harman, 17 Utah 2d 420, 413 P.2d 807 (1966).

[8] Sasseen v. Farmer, 179 Ky. 632, 201 S.W. 39 (1918).

[9] § 141.

[10] Ackman v. Potter, 239 Ill. 578, 88 N.E. 231 (1909); Egan v. Horrigan, 96 Me. 46, 51 A. 246 (1901).

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§ 138. Possession, and acts of ownership or control, of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(1)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

The conduct of both the grantor and grantee showing exercise of, or failure to exercise, ownership and control of the deeded property may be indicative of the grantor's intent with respect to delivery.[1] The fact that the grantor continues to exercise acts of ownership and authority over the premises, such as the collection of rents and profits, or the sale or attempted sale of a portion thereof, is inconsistent with the theory of an intentional delivery, operative and effectual to pass title.[2] However, it is only the cumulative effect of such circumstances which may sustain the conclusion of nondelivery.[3] Other circumstances, such as the existence of a parental or other close relationship between grantor and grantee, may indicate that the retention of the incidents of management of the property by the grantor is consistent with the passage of title to the grantee.[4] Control of land by the grantor and the exercise of acts of ownership thereon, such as the collection of rents and profits, is not inconsistent with a valid delivery where the deed has been given to a third person with instructions to deliver it to the grantee upon the death of the grantor.[5] Still, where the grantor retains possession and control of the property described in a deed, intending that there be no delivery thereof until after the grantor's death, the facts that the grantee has possession of the deed and has procured its recordation do not establish that title has passed to the grantee.[6]

The fact that the grantor retains possession of the premises does not lessen the strength of the presumption of delivery arising from possession of a deed by the grantee,[7] where the grantor reserves a life estate in the conveyance,[8] because in such case retention of possession is consistent with the interest reserved by the grantor and the presumption of delivery.[9] The fact that a

grantor continues to live on land previously conveyed and exerts dominion and control by payment of taxes and the like creates but a slight inference against the presumption of delivery arising from possession of the deed by the grantee.[10] The conveying or attempting to convey an interest in land subsequent to the execution of a deed to the whole interest, when totally unexplained, does not create an inference sufficiently strong to prove lack of intent to deliver.[11]

The law presumes that a grantor did not effectively deliver the deed when a deed is signed and acknowledged but the grantor retained control of the deed.[12]

Footnotes

1 Johndrow v. Johndrow, 1947 OK 315, 199 Okla. 363, 186 P.2d 325 (1947).

2 Jeppesen v. Jeppesen, 249 Iowa 702, 88 N.W.2d 633 (1958); Tucker v. Morey, 102 Ohio App. 328, 2 Ohio Op. 2d 359, 143 N.E.2d 627 (5th Dist. Knox County 1956); Dowell v. McNeill, 1957 OK 198, 315 P.2d 771 (Okla. 1957).

3 Mecchi v. Picchi, 245 Cal. App. 2d 470, 54 Cal. Rptr. 1 (1st Dist. 1966) (holding that there was no such cumulative effect under the particular facts of the case).

4 Mecchi v. Picchi, 245 Cal. App. 2d 470, 54 Cal. Rptr. 1 (1st Dist. 1966); Hartley v. Stibor, 96 Idaho 157, 525 P.2d 352 (1974); Corkins v. Corkins, 358 Mich. 691, 101 N.W.2d 362, 87 A.L.R.2d 783 (1960); Hackett v. Hackett, 1967 OK 117, 429 P.2d 753 (Okla. 1967); Chapman v. Chapman, 1965 OK 48, 400 P.2d 831 (Okla. 1965).

5 In re Hulteen's Estate, 170 Kan. 515, 227 P.2d 112 (1951).

6 Martinez v. Archuleta, 64 N.M. 196, 326 P.2d 1082 (1958).

7 § 136.

8 Mecchi v. Picchi, 245 Cal. App. 2d 470, 54 Cal. Rptr. 1 (1st Dist. 1966); McGhee v. Forrester, 15 Ill. 2d 162, 154 N.E.2d 230 (1958).

9 § 143.

10 McGhee v. Forrester, 15 Ill. 2d 162, 154 N.E.2d 230 (1958).

11 McGhee v. Forrester, 15 Ill. 2d 162, 154 N.E.2d 230 (1958).

12 Reicherter v. McCauley, 47 Kan. App. 2d 968, 283 P.3d 219 (2012).

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§ 139. Possession, and acts of ownership or control, of property—By grantee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(1)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

Considered in connection with other facts and circumstances, the fact that the grantor turns over possession of the property is strong evidence that the deed was delivered.[1] Likewise, a showing that the grantor, after the time of an alleged delivery, did not attempt to exercise any further control over the deed or do any act inconsistent with the grantee's ownership supports the view that the grantor made an effective conveyance.[2] Relinquishment of possession of land by the grantee prior to the recordation of a quitclaim deed or the assertion of any claim to title thereunder is a circumstance indicating that the grantor had no intention of passing present title at the time the deed was handed to the grantee.[3]

No inference that a deed executed by remaindermen was never delivered, or that it was delivered for the purpose of collateral security only, arises from the failure of the grantee or the grantee's heirs to enter into possession during the continuance of the precedent estate.[4]

Footnotes

[1] Holly v. Whitehurst, 164 Ga. 265, 138 S.E. 231 (1927); Hartman v. Thompson, 104 Md. 389, 65 A. 117 (1906); Blackwell v. Blackwell, 196 Mass. 186, 81 N.E. 910 (1907); Downs v. Downs, 89 W. Va. 155, 108 S.E. 875 (1921).

[2] White v. Hogge, 291 S.W.2d 22 (Ky. 1956).

[3] Claunch v. Whyte, 73 Idaho 243, 249 P.2d 915 (1952).

[4] Perszyk v. Milwaukee Elec. Railway & Light Co., 215 Wis. 233, 254 N.W. 753, 93 A.L.R. 395 (1934).

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§ 140. Acknowledgment of deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 193, 194(1)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

If a deed is duly acknowledged and recorded, the presumption of delivery attaches, which can be repelled only by evidence of the dissent of the grantee.[1] The leaving of the deed with the officer who took the acknowledgment, without any qualifying word or act, authorizes a finding that the deed was delivered.[2] In some jurisdictions, the certificate of acknowledgment takes the place of proof that the deed was signed and delivered, being prima facie evidence that the deed was duly executed.[3]

Generally, the presumption of the delivery of a deed which has been acknowledged can be given effect only in the absence of all evidence on the point, or when the proof is balanced, and evidence, of course, is admissible to show that in fact there never has been a delivery of the instrument.[4] In some jurisdictions, the mere fact of acknowledgment, standing alone, does not make out a prima facie showing of delivery.[5]

Footnotes

[1] Barter v. Burton Garland Revocable Trust, 2013 WL 1364096 (Ala. Civ. App. 2013).
As to the effect of acknowledgment on the presumption of the date of delivery, see § 134.

As to presumptions arising from recording, see § 141.

[2] Larson v. Johnson, 53 S.D. 299, 220 N.W. 500 (1928).

[3] Baker v. Baker, 363 Mo. 318, 251 S.W.2d 31, 33 A.L.R.2d 1431 (1952); Wilcox v. Coons, 359 Mo. 52, 220 S.W.2d 15 (1949).

[4] Mumpower v. Castle, 128 Va. 1, 104 S.E. 706 (1920).

[5] Williams v. North Carolina State Bd. of Ed., 284 N.C. 588, 201 S.E.2d 889 (1974); Enright v. Bannister, 195 Va. 76, 77 S.E.2d 377 (1953).

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§ 141. Recording

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(5)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

The recording of a regularly executed and acknowledged deed by either the grantor[1] or the grantee[2] raises a rebuttable[3] presumption of delivery,[4] which is entitled to great and controlling weight.[5] The presumption of delivery is stronger where the deed is filed for record during the grantor's lifetime than where the filing occurs thereafter.[6]

Upon recording, the presumption of delivery relates back to the date of the execution of the deed.[7]

Footnotes

1 Blankenship v. Hall, 233 Ill. 116, 84 N.E. 192 (1908); Pentico v. Hays, 75 Kan. 76, 88 P. 738 (1907).

2 Sweetland v. Buell, 164 N.Y. 541, 58 N.E. 663 (1900).

3 Reina v. Erassarret, 90 Cal. App. 2d 418, 203 P.2d 72, 7 A.L.R.2d 1309 (4th Dist. 1949); Carmack v. Place, 188 Colo. 303, 535 P.2d 197 (1975); Riehl v. Bennett, 142 So. 2d 761 (Fla. 2d DCA 1962); Williams v. North Carolina State Bd.

of Ed., 284 N.C. 588, 201 S.E.2d 889 (1974); Lieb v. Webster, 30 Wash. 2d 43, 190 P.2d 701 (1948).
As to rebuttal of the presumption, see § 142.

[4] Barter v. Burton Garland Revocable Trust, 2013 WL 1364096 (Ala. Civ. App. 2013); Corzine v. Forsythe, 263 Ark. 161, 563 S.W.2d 439 (1978); Hartley v. Stibor, 96 Idaho 157, 525 P.2d 352 (1974); Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963); Rametta v. Kazlo, 68 A.D.2d 579, 418 N.Y.S.2d 113 (2d Dep't 1979); Controlled Receivables, Inc. v. Harman, 17 Utah 2d 420, 413 P.2d 807 (1966).

[5] Controlled Receivables, Inc. v. Harman, 17 Utah 2d 420, 413 P.2d 807 (1966).

[6] Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963).

[7] Carmack v. Place, 188 Colo. 303, 535 P.2d 197 (1975).

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§ 142. Recording—Rebuttal of presumption

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(5)

The presumption of delivery from recordation may be overcome by proof of facts inconsistent with the transfer of title.[1]

Where the evidence presented to rebut the presumption of delivery arising from recordation raises an issue of credibility, it is for the trier of fact to determine whether the presumption has been defeated.[2]

Footnotes

1 Curtiss v. Ferris, 168 Colo. 480, 452 P.2d 38 (1969); Southern Associates, Inc. v. United Brands Co., 67 A.D.2d 199, 414 N.Y.S.2d 560 (1st Dep't 1979).
As to the sufficiency of evidence to overcome the presumption of delivery, see § 148.

2 Rametta v. Kazlo, 68 A.D.2d 579, 418 N.Y.S.2d 113 (2d Dep't 1979).

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§ 143. Taking back of mortgage or reservation of legal or equitable estate

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(1)

A.L.R. Library

Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787

The grantor's intention that the deed operate immediately is shown by the facts that the grantor took back a mortgage on the same property as a part of the same transaction, and that the grantor caused both the deed and the mortgage to be recorded together, and for some time retained the mortgage as a valid security.[1]

The fact that the grantor reserved a life estate for himself or herself or contemporaneously received a life lease from the grantee is some evidence that an immediate conveyance of title was contemplated[2] on the theory that the reservation indicates an intent that title should immediately vest in the grantee.[3] Similarly, evidence of the grantor's intention to reserve an equitable right or equitable title, or a showing of an agreement that the grantee would reconvey the legal title to the grantor, necessarily indicates an intent that title was to pass to the grantee.[4] Conversely, the failure of the grantor to reserve a life estate, and the grantor's remaining in possession of the property and the deed until death, strongly indicates that there was never a delivery of the deed to the grantees.[5]

Footnotes

[1] Blackwell v. Blackwell, 196 Mass. 186, 81 N.E. 910 (1907).

[2] Mecchi v. Picchi, 245 Cal. App. 2d 470, 54 Cal. Rptr. 1 (1st Dist. 1966); In re Marriage of Davault, 636 S.W.2d 422 (Mo. Ct. App. S.D. 1982); Allen v. Allen, 115 Utah 303, 204 P.2d 458 (1949).

[3] In re Marriage of Davault, 636 S.W.2d 422 (Mo. Ct. App. S.D. 1982).

[4] Bellin v. Bloom, 217 Ind. 656, 28 N.E.2d 53 (1940).

[5] Meadows v. Brich, 606 S.W.2d 258 (Mo. Ct. App. S.D. 1980).

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4. Evidence Concerning Delivery

d. Admissibility and Sufficiency

§ 144. Admissibility of parol or extrinsic evidence to show delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 200

Because a deed does not on its face show delivery, proof of delivery must ordinarily come from outside the deed, and parol evidence is admissible to show delivery.[1] While declarations or instructions of the grantor prior to delivery may be admissible,[2] the parol evidence rule excludes testimony extrinsic to a writing in which the grantor has stated instructions and conditions as to delivery of the deed.[3]

Footnotes

1 Whitney v. Dewey, 10 Idaho 633, 80 P. 1117 (1905); Reed v. Reed, 117 Me. 281, 104 A. 227 (1918).

2 § 145.

3 Moore v. Trott, 156 Cal. 353, 104 P. 578 (1909).

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§ 145. Admissibility of parol or extrinsic evidence to show delivery—Acts and declarations of grantor prior to or at time of delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 200

Evidence is competent to show an instruction given by the grantor upon handing the deed to a third person to deliver to the grantee upon the performance of certain conditions.[1] A letter from a grantor to a third person containing a deed, and directing such third person to deliver it to the grantee named therein, is admissible to prove delivery of the deed.[2] Evidence may be received as to the instructions given by the grantor to the depositary in order to determine the time of delivery and when the deed was to become effective.[3] Declarations of the grantor made contemporaneously with the signing and acknowledgment of the deed, and explanatory of the grantor's subsequent act in having the deed spread on the record, are competent evidence on the question of delivery.[4] When the issue is whether a person has divested himself or herself of title, such person's declarations and acts immediately after the signing of an instrument, in form a deed to the property in dispute and tending to show a delivery thereof, are admissible as being admissions or declarations against interest.[5] Also, what a grantor said to an attorney at the time of the execution and delivery of the deed to the attorney for delivery over to the grantee upon the grantor's death is admissible on the question of an effective delivery during the grantor's lifetime.[6]

Footnotes

1 Kammrath v. Kidd, 89 Minn. 380, 95 N.W. 213 (1903).

2 Union Oil Co. v. Stewart, 158 Cal. 149, 110 P. 313 (1910).

3 Norton v. Norton, 105 Or. 651, 209 P. 1048 (1922).

[4] Napier v. Elliott, 146 Ala. 213, 40 So. 752 (1906).

[5] Rice v. Carey, 170 Cal. 748, 151 P. 135 (1915).

[6] Hered v. Nemethy, 15 A.D.2d 791, 224 N.Y.S.2d 723 (2d Dep't 1962).

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d. Admissibility and Sufficiency

§ 146. Admissibility of parol or extrinsic evidence to show delivery—Acts and declarations of grantor after delivery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 200

A.L.R. Library

Admissibility of declarations of grantor on issue of delivery of deed, 34 A.L.R.2d 588

The acts and declarations of the grantor after delivering the deed physically to the grantee, or to a third person to hold for the grantee until some future time, are admissible as bearing on the intention of the grantor to make delivery.[1] Declarations of the grantor made subsequently to the execution of the deed, which have been held admissible even though derogatory to the title of the grantee, have included statements indicating that the grantor proposed or desired to sell the property purported to have been conveyed by the deed,[2] that the instrument was in effect a will,[3] that delivery was contingent upon certain eventualities,[4] and that the grantor intended to destroy the deed,[5] as well as statements tending to show duress in the execution of the instrument[6] and statements in which the grantor, expressly or by necessary inference, indicated that the grantor considered himself or herself the owner of the property.[7] While evidence of this character is usually presented in an effort to disprove delivery, it is equally admissible for the purpose of showing that the grantor intended to divest himself or herself of title,[8] on the theory that such declarations were against interest, or disserving statements.[9]

On the other hand, some courts have refused to admit declarations of a grantor made after execution of the deed when offered in evidence tending to disprove delivery on the principle that a grantor's declarations impeaching the deed are not admissible.[10]

Footnotes

[1] Osborn v. Osborn, 42 Cal. 2d 358, 267 P.2d 333 (1954); Stevenson v. Harris, 124 Ind. App. 358, 118 N.E.2d 368 (1954); Stennis v. Stennis, 218 So. 2d 716 (Miss. 1969).

[2] Rice v. Carey, 170 Cal. 748, 151 P. 135 (1915); Coles v. Belford, 289 Mo. 97, 232 S.W. 728 (1921); Chamberlain v. Larsen, 83 Utah 420, 29 P.2d 355 (1934).

[3] Manwell v. Board of Home Missions and Church Extension of Methodist Episcopal Church, 122 Cal. App. 599, 10 P.2d 787 (1st Dist. 1932).

[4] Crenshaw v. Crenshaw, 68 Idaho 470, 199 P.2d 264 (1948).

[5] Galloway v. Galloway, 169 S.W.2d 883 (Mo. 1943).

[6] Morgan v. Matthieson, 103 Cal. App. 510, 285 P. 325 (1st Dist. 1930).

[7] Schultz v. Young, 37 N.M. 427, 24 P.2d 276 (1933); McDevitt v. Morrow, 57 Ohio L. Abs. 281, 94 N.E.2d 2 (Ct. App. 2d Dist. Franklin County 1950); Stanley v. Stanley, 97 Utah 520, 94 P.2d 465 (1939).

[8] Henneberry v. Henneberry, 164 Cal. App. 2d 125, 330 P.2d 250 (1st Dist. 1958); Rich v. Wry, 110 Vt. 307, 6 A.2d 7 (1939).

[9] Williams v. Dent, 233 Ala. 109, 170 So. 202 (1936); Williams v. Kidd, 170 Cal. 631, 151 P. 1 (1915); Silbernagel v. Silbernagel, 79 N.D. 275, 55 N.W.2d 713 (1952); Ottinger v. Brown, 43 Tenn. App. 44, 306 S.W.2d 5 (1957); Chew v. Jackson, 45 Tex. Civ. App. 656, 102 S.W. 427 (1907), writ refused.

[10] Potter v. Barringer, 236 Ill. 224, 86 N.E. 233 (1908); Mathers v. Sewell, 193 Iowa 35, 186 N.W. 636 (1922); Kerns v. Kerns, 157 Neb. 786, 61 N.W.2d 405 (1953); Ottinger v. Brown, 43 Tenn. App. 44, 306 S.W.2d 5 (1957).

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IX. Execution, Delivery, and Acceptance

E. Delivery

4. Evidence Concerning Delivery

d. Admissibility and Sufficiency

§ 147. Sufficiency of evidence

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 208(1)

The party asserting delivery must establish it by a preponderance of the evidence.[1] The question of what evidence shows a delivery of a deed is, like other questions of the weight and sufficiency of evidence, one that cannot be answered in any general way. Where there is credible direct evidence of the delivery of a deed and only indirect evidence of nondelivery, the direct evidence will prevail.[2]

The fact that the deed is retained in the possession of the grantor is presumptive,[3] but not conclusive, proof of nondelivery of the deed.[4]

Where the evidence shows that the parties clearly intended that title should immediately vest in the grantee but that they mistakenly believed that recordation was necessary for the passage of title, their mistake is not incompatible with their intent and does not defeat an otherwise valid delivery.[5] Nondelivery is not shown merely by evidence that the deed was not recorded until after the grantor's death.[6]

Footnotes

1 Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994).

2 Sylvain v. Page, 84 Mont. 424, 276 P. 16, 63 A.L.R. 528 (1929); Rametta v. Kazlo, 68 A.D.2d 579, 418 N.Y.S.2d 113 (2d Dep't 1979).

3 § 137.

[4] Snodgrass v. Snodgrass, 1924 OK 597, 107 Okla. 140, 231 P. 237, 52 A.L.R. 1213 (1924).

[5] Exsted v. Exsted, 202 Minn. 521, 279 N.W. 554, 117 A.L.R. 599 (1938).

[6] Zumwalt v. Forbis, 349 Mo. 752, 163 S.W.2d 574 (1942).

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IX. Execution, Delivery, and Acceptance

E. Delivery

4. Evidence Concerning Delivery

d. Admissibility and Sufficiency

§ 148. Sufficiency of evidence—To overcome presumptions of delivery

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 208(1)

When a presumption of delivery[1] arises, nothing except the most satisfactory evidence of nondelivery can prevail against it;[2] a mere preponderance of the evidence is not sufficient.[3] The weight of evidence required varies; the standards applied have included:
• the standard of clear and positive evidence[4]
• the standard of clear and satisfactory evidence[5]
• the standard of clear and convincing evidence[6]
• the standard of clear, cogent, and convincing evidence[7]
• the standard of clear, convincing, and satisfactory evidence[8]

CUMULATIVE SUPPLEMENT

Cases:

A party may overcome the presumption that a deed was delivered with the intent that it operates as a conveyance by showing that it was delivered for a different purpose. McGehee v. Endeavor Acquisitions, LLC, 603 S.W.3d 515 (Tex. App. El Paso 2020).

[END OF SUPPLEMENT]

Footnotes

1 §§ 136 to 148.

2 Smith v. Noble, 174 Ky. 15, 191 S.W. 641 (1917).

3 Miller v. Armstrong, 234 Iowa 1166, 15 N.W.2d 265 (1944); Rametta v. Kazlo, 68 A.D.2d 579, 418 N.Y.S.2d 113 (2d Dep't 1979).

4 Chapman v. Chapman, 1965 OK 48, 400 P.2d 831 (Okla. 1965).

5 Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963); Jeppesen v. Jeppesen, 249 Iowa 702, 88 N.W.2d 633 (1958).

6 Paoli v. Anderson, 208 So. 2d 167 (Miss. 1968); Adams v. Little Missouri Minerals Ass'n, 143 N.W.2d 659 (N.D. 1966); Controlled Receivables, Inc. v. Harman, 17 Utah 2d 420, 413 P.2d 807 (1966).

7 Corzine v. Forsythe, 263 Ark. 161, 563 S.W.2d 439 (1978); Pollock v. Brown, 569 S.W.2d 724 (Mo. 1978).

8 Klosterboer v. Engelkes, 255 Iowa 1076, 125 N.W.2d 115 (1963).

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F. Acceptance

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 54, 60, 63.1 to 66, 194(4)

A.L.R. Library

A.L.R. Index, Deeds
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 54, 60, 63.1 to 66, 194(4)

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IX. Execution, Delivery, and Acceptance

F. Acceptance

§ 149. Generally; necessity

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 63.1, 64

An acceptance on the part of the grantee is essential in order to complete the delivery of a deed, whether such delivery is actual or constructive, and to make the instrument operate as a conveyance of title.[1] Should the grantee in a deed refuse to accept it, the instrument is not delivered[2] even though the grantor has done all that is required of a grantor to consummate delivery—and title does not pass by virtue thereof.[3] Even a deed purely by way of gift and which imposes no obligations on the grantee other than those necessarily incident to ownership of the land requires acceptance to be operative[4] because an estate cannot be thrust upon a person against that person's will.[5]

Footnotes

1 Dupeck v. Union Ins. Co. of America, 329 F.2d 548 (8th Cir. 1964) (applying Missouri law); Luna v. Brownell, 185 Cal. App. 4th 668, 110 Cal. Rptr. 3d 573 (2d Dist. 2010); Blankenship v. Myers, 97 Idaho 356, 544 P.2d 314 (1975); Juchno v. Toton, 338 Mass. 309, 155 N.E.2d 162, 74 A.L.R.2d 988 (1959); Long Meadow Homeowners' Association, Inc. v. Harland, 89 So. 3d 591 (Miss. Ct. App. 2011), cert. granted, 78 So. 3d 906 (Miss. 2012) and aff'd, 89 So. 3d 573 (Miss. 2012); Matter of Estate of Dittus, 497 N.W.2d 415 (N.D. 1993); Goddard v. Goddard, 192 Ohio App. 3d 718, 2011-Ohio-680, 950 N.E.2d 567 (4th Dist. Scioto County 2011); Walls v. Click, 209 W. Va. 627, 550 S.E.2d 605 (2001); Jackson County v. State, Dept. of Natural Resources, 2006 WI 96, 293 Wis. 2d 497, 717 N.W.2d 713 (2006); B-T Ltd. v. Blakeman, 705 P.2d 307 (Wyo. 1985).
As to the concurrence of delivery and acceptance, see § 150.

2 Martin v. Adams, 216 Miss. 270, 62 So. 2d 328 (1953); Mayfield v. Dwelling House Mut. Ins. Co., 121 Neb. 217, 236 N.W. 689 (1931).

3 Brady v. Huber, 197 Ill. 291, 64 N.E. 264 (1902); Sheeby v. Scott, 128 Iowa 551, 104 N.W. 1139 (1905); Chambers v. Chambers, 227 Mo. 262, 127 S.W. 86 (1910).

4 Talty v. Schoenholz, 323 Ill. 232, 154 N.E. 139, 49 A.L.R. 1487 (1926); Kessler v. Kruidenier, 174 Minn. 434, 219

N.W. 552 (1928).
As to the presumption of acceptance where the grant is beneficial, see § 160.

5 Reina v. Erassarret, 90 Cal. App. 2d 418, 203 P.2d 72, 7 A.L.R.2d 1309 (4th Dist. 1949); Adams v. Little Missouri Minerals Ass'n, 143 N.W.2d 659 (N.D. 1966).

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IX. Execution, Delivery, and Acceptance

F. Acceptance

§ 150. Consensus of parties; delivery and acceptance as correlative acts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 54, 63.1

A.L.R. Library

Admissibility of declarations of grantor on issue of delivery of deed, 34 A.L.R.2d 588

Delivery involves the notion of acceptance, the consensus of both the grantor and the grantee being required in order that a delivery may be effective.[1] There must be a giving by the grantor and a receiving by the grantee with a mutual intention to pass a present title from the one to the other.[2] Delivery and acceptance are simultaneous and correlative acts,[3] comparable to the companion acts of offer and acceptance of a contract.[4] Acceptance presupposes an antecedent delivery or tender thereof.[5] If the grantee never accepts the deed, there is no delivery, and the deed is void.[6]

Footnotes

1 Cleveland v. Breckenridge, 173 Ark. 387, 292 S.W. 377 (1927); Hotaling v. Hotaling, 193 Cal. 368, 224 P. 455, 56 A.L.R. 734 (1924); Hardin v. Kazee, 238 Ky. 526, 38 S.W.2d 438 (1931); Seibel v. Higham, 216 Mo. 121, 115 S.W. 987 (1908); Hayes v. Moffatt, 83 Mont. 214, 271 P. 433 (1928); Birchard v. Simons, 59 S.D. 422, 240 N.W. 490 (1932); Tucker v. Inglish, 135 Wash. 146, 237 P. 297 (1925); Walls v. Click, 209 W. Va. 627, 550 S.E.2d 605 (2001).

2 Blankenship v. Myers, 97 Idaho 356, 544 P.2d 314 (1975).

3 Reina v. Erassarret, 90 Cal. App. 2d 418, 203 P.2d 72, 7 A.L.R.2d 1309 (4th Dist. 1949); Hood v. Hood, 384 A.2d 706 (Me. 1978).

[4] County of Worth v. Jorgenson, 253 N.W.2d 575 (Iowa 1977).

[5] Kirby v. Hulette, 174 Ky. 257, 192 S.W. 63 (1917).

[6] Hood v. Hood, 384 A.2d 706 (Me. 1978).

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IX. Execution, Delivery, and Acceptance

F. Acceptance

§ 151. What constitutes, and prerequisites to, acceptance; intention to accept

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 63.1, 64

A.L.R. Library
What constitutes acceptance of deed by grantee, 74 A.L.R.2d 992

The acceptance of a deed by the grantee presupposes an antecedent delivery or tender thereof to him.[1] The requisites of acceptance are the grantee's knowledge of delivery or tender of the deed,[2] an intention to take the legal title to the property which the deed purports to convey,[3] and the manifestation of such intention by some act, conduct, or declaration.[4] Where the deed itself specifies the time or manner of acceptance, the grantee must comply therewith.[5]

Acceptance is primarily a matter of the grantee's intention; hence, the significant inquiry is as to the grantee's intention as manifested by the grantee's words and acts.[6] Express words and positive acts are not necessary;[7] intention to accept may be inferred from such conduct as conveying or mortgaging the property,[8] recording the deed,[9] or otherwise exercising the rights of an owner[10] provided the grantee had, at the time of such action, knowledge of the conveyance.[11] Subsequent assent by a grantee to a conveyance made without such grantee's knowledge is sufficient to constitute an acceptance, at least where there has been a physical delivery of the deed, without reservation, by the grantor to a third party.[12] Where the issue of acceptance is disputed, testimony as to the grantee's declarations is admissible to show intent.[13]

Acceptance of a confirmation deed may be shown by the acts of the grantee clearly indicating an intent to accept.[14]

Footnotes

[1] § 150.

[2] Linthicum v. Pruden, 313 Ky. 527, 233 S.W.2d 98 (1950); Juchno v. Toton, 338 Mass. 309, 155 N.E.2d 162, 74 A.L.R.2d 988 (1959); Jenkins v. Miller, 2008 WY 45, 180 P.3d 925 (Wyo. 2008).

[3] Holt v. Werbe, 198 F.2d 910 (8th Cir. 1952); Shorey v. Daniel, 27 Ariz. 496, 234 P. 551 (1925); Henneberry v. Henneberry, 164 Cal. App. 2d 125, 330 P.2d 250 (1st Dist. 1958); Kirkman v. Faulkner, 524 P.2d 648 (Colo. App. 1974); Blankenship v. Myers, 97 Idaho 356, 544 P.2d 314 (1975); County of Worth v. Jorgenson, 253 N.W.2d 575 (Iowa 1977); Jenkins v. Miller, 2008 WY 45, 180 P.3d 925 (Wyo. 2008).

[4] Holt v. Werbe, 198 F.2d 910 (8th Cir. 1952); County of Worth v. Jorgenson, 253 N.W.2d 575 (Iowa 1977); Jenkins v. Miller, 2008 WY 45, 180 P.3d 925 (Wyo. 2008).

[5] Newton v. Village of Glen Ellyn, 374 Ill. 50, 27 N.E.2d 821 (1940).

[6] Fritz v. Fritz, 479 S.W.2d 198 (Mo. Ct. App. 1972); Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977); Tucker v. Inglish, 135 Wash. 146, 237 P. 297 (1925); Jenkins v. Miller, 2008 WY 45, 180 P.3d 925 (Wyo. 2008).
As to the controlling effect of intention on the question of delivery, see § 105.

[7] Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977).
Acceptance by the grantee may be express or implied. Dupeck v. Union Ins. Co. of America, 329 F.2d 548 (8th Cir. 1964) (applying Missouri law).

[8] Riehl v. Bennett, 142 So. 2d 761 (Fla. 2d DCA 1962); Neblett v. Placid Oil Co., 257 So. 2d 167 (La. Ct. App. 3d Cir. 1971); Fritz v. Fritz, 479 S.W.2d 198 (Mo. Ct. App. 1972).

[9] Chandler v. Hartt, 467 S.W.2d 629 (Tex. Civ. App. Tyler 1971), writ refused n.r.e., (Oct. 6, 1971); Langman v. Alumni Ass'n of University of Virginia, 247 Va. 491, 442 S.E.2d 669, 90 Ed. Law Rep. 854 (1994).

[10] Nutz v. Shepherd, 490 S.W.2d 366 (Mo. Ct. App. 1973); Langman v. Alumni Ass'n of University of Virginia, 247 Va. 491, 442 S.E.2d 669, 90 Ed. Law Rep. 854 (1994); Washington Homes Ass'n v. Wanecek, 252 Wis. 485, 32 N.W.2d 223 (1948).

[11] Juchno v. Toton, 338 Mass. 309, 155 N.E.2d 162, 74 A.L.R.2d 988 (1959).

[12] Hood v. Hood, 384 A.2d 706 (Me. 1978).

[13] Kirkman v. Faulkner, 524 P.2d 648 (Colo. App. 1974).

[14] Neblett v. Placid Oil Co., 257 So. 2d 167 (La. Ct. App. 3d Cir. 1971).

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F. Acceptance

§ 152. What constitutes, and prerequisites to, acceptance; intention to accept—Grantee's possession of deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 65

A.L.R. Library

What constitutes acceptance of deed by grantee, 74 A.L.R.2d 992

Actual possession of the deed by the grantee is not essential,[1] nor does it necessarily indicate the grantee's acceptance thereof,[2] although it may be indicative of acceptance.[3]

Footnotes

1 Marshall v. Marshall, 140 Cal. App. 2d 475, 295 P.2d 131 (2d Dist. 1956); Huxley v. Liess, 226 Iowa 819, 285 N.W. 216 (1939); Lemon v. Madden, 205 Or. 107, 284 P.2d 1037 (1955).

2 Seibert v. Seibert, 379 Ill. 470, 41 N.E.2d 544, 141 A.L.R. 299 (1942).

3 California Trust Co. v. Hughes, 111 Cal. App. 2d 717, 245 P.2d 374 (2d Dist. 1952); Dunn v. Heasley, 375 Ill. 43, 30 N.E.2d 628 (1940); Baker v. Baker, 363 Mo. 318, 251 S.W.2d 31, 33 A.L.R.2d 1431 (1952).

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F. Acceptance

§ 153. What constitutes, and prerequisites to, acceptance; intention to accept—Question of law or fact

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 66

Whether a deed has been accepted is ordinarily a question of fact to be determined by the trier of facts.[1] At other times, it may be a mixed question of law and fact.[2] However, whether the facts, once ascertained, constitute acceptance is always a question of law.[3] Where the grantee is a corporation, whether handing the deed to its officer is an acceptance binding on the corporation is primarily a question of law, the determination of which depends on the powers of such officer under the law and the corporate charter.[4] Acceptance of a deed by an attorney in a general capacity of legal adviser for a corporation and without special authority is not an acceptance by the corporation.[5]

Footnotes

1 Luna v. Brownell, 185 Cal. App. 4th 668, 110 Cal. Rptr. 3d 573 (2d Dist. 2010); Hood v. Hood, 384 A.2d 706 (Me. 1978); Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977); Chandler v. Hartt, 467 S.W.2d 629 (Tex. Civ. App. Tyler 1971), writ refused n.r.e., (Oct. 6, 1971).

2 Pollock v. Brown, 569 S.W.2d 724 (Mo. 1978); Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977).

3 Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977); Chandler v. Hartt, 467 S.W.2d 629 (Tex. Civ. App. Tyler 1971), writ refused n.r.e., (Oct. 6, 1971).

4 Wood v. City of Montpelier, 85 Vt. 467, 82 A. 671 (1912).

5 Lexington Gold Min. Co. v. Jefferson Min. Co., 16 Colo. App. 520, 66 P. 677 (1901).

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IX. Execution, Delivery, and Acceptance

F. Acceptance

§ 154. Conditional or partial acceptance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 60, 65

A.L.R. Library

What constitutes acceptance of deed by grantee, 74 A.L.R.2d 992

Although it has been stated that "delivery" means not only an unconditional delivery by the grantor[1] but also an unconditional acceptance by the grantee or buyer,[2] the acceptance of a deed may be conditional so as to become effective upon, but not before, compliance with or satisfaction of the specified conditions.[3] There is no acceptance of a deed by the grantee where conditions of recording the papers and redating the abstract to show whether title is clear are understood by all the parties as conditions precedent to final delivery and acceptance, and such conditions are not met.[4]

There cannot be a partial acceptance of a deed. In accepting a deed, the grantee accepts each and every term and provision contained therein.[5]

Footnotes

1 § 112.

2 Powderly v. Aetna Cas. & Sur. Co., 72 Misc. 2d 251, 338 N.Y.S.2d 555 (Sup 1972).

3 Imes v. MacDonald, 113 Cal. App. 427, 298 P. 173 (3d Dist. 1931); Averitt v. Bellamy, 406 S.W.2d 410 (Ky. 1966); Adams v. Little Missouri Minerals Ass'n, 143 N.W.2d 659 (N.D. 1966); Sun Exploration and Production Co. v.

Benton, 728 S.W.2d 35 (Tex. 1987).

[4] Powderly v. Aetna Cas. & Sur. Co., 72 Misc. 2d 251, 338 N.Y.S.2d 555 (Sup 1972).

[5] Chandler v. Hartt, 467 S.W.2d 629 (Tex. Civ. App. Tyler 1971), writ refused n.r.e., (Oct. 6, 1971).

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F. Acceptance

§ 155. Who may accept

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 65

A.L.R. Library

What constitutes acceptance of deed by grantee, 74 A.L.R.2d 992

The grantor's intentions as to who might accept the deed and the conditions under which it may be accepted must be considered.[1]

Footnotes

1 Underwood v. Gillespie, 594 S.W.2d 372 (Mo. Ct. App. S.D. 1980).

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IX. Execution, Delivery, and Acceptance

F. Acceptance

§ 156. Who may accept—Agent or cograntee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 65

A.L.R. Library

What constitutes acceptance of deed by grantee, 74 A.L.R.2d 992

The grantor's intentions as to who might accept the deed and the conditions under which it may be accepted must be considered.[1] The acceptance of a deed may be effectuated by the delivery of the deed to an agent of the grantee,[2] or to a cograntee,[3] or to some other person if authorized, assented to, or ratified by the grantee.[4] The Statute of Frauds does not require that the agent be appointed in writing in order that delivery of a deed to such agent may make it binding on the grantee.[5] Under some circumstances, the grantor may act as agent of the grantee for acceptance of the deed.[6]

Where a deed runs in favor of more than one grantee, acceptance by all of them is presumed from acceptance by one; each grantee can accept for himself or herself even though delivery is made to only one.[7] If, however, one of them refuses to accept it, such grantee's share does not vest in the others but remains in the grantor.[8] One grantee may accept as to the interest conveyed to him or her by deed even though another grantee chooses to repudiate[9] or has no knowledge of the deed.[10]

Acceptance of a deed by a life tenant is also a sufficient acceptance for the benefit of the remaindermen; conversely, a rejection of a deed by a life tenant prevents the remaindermen from acquiring an interest in the property.[11]

Footnotes

[1] Underwood v. Gillespie, 594 S.W.2d 372 (Mo. Ct. App. S.D. 1980).

[2] Wiley v. London & Lancashire Fire Ins. Co., 89 Conn. 35, 92 A. 678 (1914); Taylor v. Smith, 61 A.D. 623, 71 N.Y.S. 160 (4th Dep't 1901).

[3] Sullivan v. Sullivan, 179 Ky. 686, 201 S.W. 24 (1918).

[4] Lemon v. Madden, 205 Or. 107, 284 P.2d 1037 (1955).

[5] Dorr Cattle Co. v. Des Moines Nat. Bank, 127 Iowa 153, 98 N.W. 918 (1904).

[6] Blackwell v. Blackwell, 196 Mass. 186, 81 N.E. 910 (1907); Whiting v. Hoglund, 127 Wis. 135, 106 N.W. 391 (1906).

[7] Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977).

[8] Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977).

[9] Arwe v. White, 117 N.H. 1025, 381 A.2d 737 (1977); Allen v. Allen, 115 Utah 303, 204 P.2d 458 (1949).

[10] Allen v. Allen, 115 Utah 303, 204 P.2d 458 (1949).

[11] Underwood v. Gillespie, 594 S.W.2d 372 (Mo. Ct. App. S.D. 1980).

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IX. Execution, Delivery, and Acceptance

F. Acceptance

§ 157. Who may accept—Third person

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 65

Delivery of a deed by the grantor to a third person for the use and benefit of the grantee, followed by the grantee's subsequent acceptance, makes the deed effectual.[1] If the grantee does not accept the deed or does not ratify the acceptance by the third person, there is not a consummated delivery.[2] The fact that the deed was filed with the register and was recorded is prima facie evidence that the deed was accepted by the grantee, notwithstanding it does not appear by whom the deed was filed for record.[3]

Footnotes

1 Emmons v. Harding, 162 Ind. 154, 70 N.E. 142 (1904); Hanscom v. Hanscom, 186 Or. 541, 208 P.2d 330 (1949).

2 Wood v. City of Montpelier, 85 Vt. 467, 82 A. 671 (1912).
As to ratification, see § 158.

3 McAnally v. Texas Co., 124 Tex. 196, 76 S.W.2d 997 (1934).

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IX. Execution, Delivery, and Acceptance

F. Acceptance

§ 158. Ratification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 64, 65

Where the grantor delivers the deed to a third person with the intention that the title thereby pass to the grantee, but the recipient has no authority to receive the deed on behalf of the grantee, the grantee may ratify what was done on his or her behalf, and the imperfect delivery thereupon becomes complete and perfected.[1] Express assent by the grantee is not necessary. The grantee's assent and ratification of the acceptance of the deed may be inferred from the grantee's conduct after obtaining knowledge of the existence of the deed.[2] Failure to renounce the deed after knowledge of its existence is sufficient to show that the grantee accepted the deed.[3]

Footnotes

1 Parmelee v. Simpson, 72 U.S. 81, 18 L. Ed. 542, 1866 WL 9363 (1866); Wipfler v. Wipfler, 153 Mich. 18, 116 N.W. 544 (1908).

2 Dupeck v. Union Ins. Co. of America, 329 F.2d 548 (8th Cir. 1964) (applying Missouri law); Riehl v. Bennett, 142 So. 2d 761 (Fla. 2d DCA 1962); Langman v. Alumni Ass'n of University of Virginia, 247 Va. 491, 442 S.E.2d 669, 90 Ed. Law Rep. 854 (1994); Collins v. Columbia Gas Transmission Corp., 188 W. Va. 460, 425 S.E.2d 136 (1992).

3 Riehl v. Bennett, 142 So. 2d 761 (Fla. 2d DCA 1962); Miller v. Miller, 91 Kan. 1, 136 P. 953 (1913).

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F. Acceptance

§ 159. Estoppel

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 64

Equally with the grantor,[1] the grantee may be estopped by subsequent conduct from asserting that the delivery was imperfect through want of acceptance of the deed.[2] If the grantee represents to the grantor that he or she never accepted a deed, because it was not executed in accordance with the grantee's wishes and demands, and receives from the grantor a new deed, the grantee and subsequent grantees are estopped to claim under the original one.[3]

Footnotes

1 § 109.

2 Johnson v. Wheeler, 41 Wash. 2d 246, 248 P.2d 558 (1952).

3 Ames v. Ames, 80 Ark. 8, 96 S.W. 144 (1906).

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IX. Execution, Delivery, and Acceptance

F. Acceptance

§ 160. Presumption of acceptance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(4)

A.L.R. Library

What constitutes acceptance of deed by grantee, 74 A.L.R.2d 992

Acceptance of a deed may be presumed under certain circumstances but will only be presumed when the deed creates no obligation or burden upon the grantee[1] and is beneficial to the grantee.[2] Where a deed imposes an obligation upon or creates any liability against a grantee, an acceptance cannot rest upon a mere presumption but must be of an affirmative character.[3] Acceptance will not be implied when manifestly the subject property is a "white elephant," with the owner having a considerable burden and expense of razing or reconstructing the building.[4]

Where the grant is beneficial to the grantee, the presumption of acceptance generally arises even though the transaction is without the grantee's knowledge; and this presumption will prevail in the absence of evidence to the contrary.[5] Where no rights of creditors or other third parties intervene, the presumption of acceptance of a deed of beneficial character comes into operation at the time when the grantor places the deed in the hands of the third person even though the grantee at that time has no knowledge of it.[6]

The possession of half of a deed that had been rejected earlier by being torn in two does not entitle the holder of the half deed to the presumption of acceptance.[7]

Footnotes

[1] McGowan v. Lockwood, 65 Colo. 264, 176 P. 298 (1918); County of Worth v. Jorgenson, 253 N.W.2d 575 (Iowa 1977).

[2] Tompkins v. Wheeler, 41 U.S. 106, 10 L. Ed. 903, 1842 WL 5729 (1842); Midkiff v. Colton, 252 F. 420 (C.C.A. 4th Cir. 1918); County of Worth v. Jorgenson, 253 N.W.2d 575 (Iowa 1977).

[3] Seibert v. Seibert, 379 Ill. 470, 41 N.E.2d 544, 141 A.L.R. 299 (1942).

[4] County of Worth v. Jorgenson, 253 N.W.2d 575 (Iowa 1977).

[5] County of Worth v. Jorgenson, 253 N.W.2d 575 (Iowa 1977); Williams v. Herring, 15 N.C. App. 642, 190 S.E.2d 696 (1972).

[6] Herman v. Mortensen, 72 Cal. App. 2d 413, 164 P.2d 551 (1st Dist. 1945).

[7] Underwood v. Gillespie, 594 S.W.2d 372 (Mo. Ct. App. S.D. 1980).

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F. Acceptance

§ 161. Presumption of acceptance—Rebuttal

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 194(4)

A.L.R. Library

What constitutes acceptance of deed by grantee, 74 A.L.R.2d 992

A presumption of acceptance of a deed is not conclusive.[1] The dissent of the grantee may be shown and the deed thereby rendered ineffectual,[2] and a deed will not become operative by virtue of a presumed acceptance where the facts and circumstances establish reasons why the grantee held the deed without accepting it.[3] Whether the return of a deed by the grantee to the grantor negatives the acceptance thereof depends upon the purpose of such return and other relevant circumstances.[4]

The evidence to overcome the presumption that a deed was delivered to and accepted by the grantee must be clear and convincing[5] and is a question for the jury to decide.[6]

Footnotes

1 Collins v. Columbia Gas Transmission Corp., 188 W. Va. 460, 425 S.E.2d 136 (1992).

2 Seibert v. Seibert, 379 Ill. 470, 41 N.E.2d 544, 141 A.L.R. 299 (1942); Wilson v. Olsen, 336 S.W.2d 899 (Tex. Civ. App. El Paso 1960).

3 Imes v. MacDonald, 113 Cal. App. 427, 298 P. 173 (3d Dist. 1931); Puckett v. Hoover, 146 Tex. 1, 202 S.W.2d 209

(1947).

4 Cornett v. Maddin, 277 Ky. 480, 126 S.W.2d 871 (1939).

5 Adams v. Little Missouri Minerals Ass'n, 143 N.W.2d 659 (N.D. 1966).

6 Collins v. Columbia Gas Transmission Corp., 188 W. Va. 460, 425 S.E.2d 136 (1992).

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A. In General

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Research References

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West's Key Number Digest, Deeds 45, 50, 52, 68(.5), 70(1), 196(.5), 196(1)

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X. Validity

A. In General

§ 162. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 68(.5)

Forms

Am. Jur. Pleading and Practice Forms, Deeds § 18 (Complaint, petition, or declaration—For cancellation—Deed procured through intentional misrepresentation—As to conditional nature of deed)

A deed will be rendered invalid by the fact that the named grantor under the deed is not the record title holder of the property purported to be transferred on the date the deed is executed.[1] The mere fact of the grantor's failure to read over a deed or to have it read to him or her before signing it is not, in the absence of any fraud or fraudulent representations as to its consequences, a ground for setting it aside.[2] A grantor who knows he or she is executing and delivering a deed is charged with the responsibility of informing him- or herself as to the legal effect of the document that is being signed.[3]

Footnotes

1 Bald Mountain Park, Ltd. v. Oliver, 863 F.2d 1560 (11th Cir. 1989) (applying Georgia law).

2 Popwell v. Greene, 465 So. 2d 384 (Ala. 1985); Griffin v. Roanoke R. & Lumber Co., 140 N.C. 514, 53 S.E. 307 (1906); Hale v. Hale, 62 W. Va. 609, 59 S.E. 1056 (1907).

3 McCoy v. Love, 382 So. 2d 647 (Fla. 1979).

Works.

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X. Validity

A. In General

§ 163. Distinctions between void, voidable, and inoperative deeds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 70(1)

When used in its correct sense, the term "voidable," with regard to a deed, has much the same meaning that it has in the law of contracts—that is, as meaning a writing that is both operative to convey the property and creative of contractual obligations unless and until set aside by the court.[1] A voidable deed is capable of being either avoided or confirmed.[2] The word "void," on the other hand, implies that the deed is invalid in law for any purpose whatsoever,[3] such as a deed to effectuate a prohibited transaction.[4] A voidable deed must be attacked, if at all, directly, but a deed that is void may be collaterally attacked by anyone whose interest is adversely affected by it.[5] The recording of a void deed is legally insufficient to create a legal title and affords no protection to those claiming under it.[6]

When used distinctively from the terms "void" and "voidable," the term "inoperative" connotes that the deed is ineffectual to convey legal title[7] although it may operate contractually.[8]

Footnotes

1 Walton v. Malcolm, 264 Ill. 389, 106 N.E. 211 (1914); Kuczewski v. De Magnassun, 242 Mich. 296, 218 N.W. 657, 57 A.L.R. 756 (1928); Griffin v. Roanoke R. & Lumber Co., 140 N.C. 514, 53 S.E. 307 (1906).

2 Love v. Elliott, 350 So. 2d 93 (Fla. 1st DCA 1977), approved in part, quashed in part on other grounds, 382 So. 2d 647 (Fla. 1979); Bopp v. Knowles, 359 Mo. 871, 224 S.W.2d 65 (1949).

3 Love v. Elliott, 350 So. 2d 93 (Fla. 1st DCA 1977), approved in part, quashed in part on other grounds, 382 So. 2d 647 (Fla. 1979).

4 Altemus v. Nichols, 115 Ky. 506, 24 Ky. L. Rptr. 2401, 74 S.W. 221 (1903).

5 Gulf Land & Development Co. v. McRaney, 197 So. 2d 212 (Miss. 1967).

[6] McCoy v. Love, 382 So. 2d 647 (Fla. 1979).

[7] Miller v. Miller, 110 Ind. App. 191, 38 N.E.2d 343 (1942).

[8] § 294.

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X. Validity

A. In General

§ 164. Instrument executed in blank or containing blanks

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 50

As between the parties, at least, a blank deed or a deed containing blanks which is executed and delivered and which is subsequently filled in without authority from the grantor is invalid and will not pass title to any property.[1] The filling in or completion of a deed signed in blank, after the death of the grantor, is a nullity.[2] However, although a deed is blank or contains blank spaces for some clauses when originally executed, if it is completed by the grantor or with the grantor's authority and then delivered, the deed will be operative and effective to convey title.[3] Even if the blanks are filled in contrary to the grantor's intention, the grantor is estopped to assert the invalidity of the deed.[4]

When a printed deed form is used, the failure to fill in or complete, in any manner, one of the several clauses in the form ordinarily has the effect of eliminating such uncompleted provision as a part of the completed deed.[5]

Footnotes

1 Curlee v. Morris, 196 Ark. 779, 120 S.W.2d 10 (1938); Green v. MacAdam, 175 Cal. App. 2d 481, 346 P.2d 474 (4th Dist. 1959); West v. Witschner, 428 S.W.2d 538 (Mo. 1968); Schueler v. Lynam, 80 Ohio App. 325, 36 Ohio Op. 32, 49 Ohio L. Abs. 225, 75 N.E.2d 464 (2d Dist. Montgomery County 1947).

2 Ridenour v. Duncan, 291 S.W.2d 900 (Mo. 1956); Schueler v. Lynam, 80 Ohio App. 325, 36 Ohio Op. 32, 49 Ohio L. Abs. 225, 75 N.E.2d 464 (2d Dist. Montgomery County 1947).
As to the insertion of the grantee's name after the death of the grantor, see § 35.

3 Robinson v. Bascom, 85 N.M. 453, 1973-NMCA-115, 513 P.2d 190 (Ct. App. 1973); Gajewski v. Bratcher, 221 N.W.2d 614, 81 A.L.R.3d 211 (N.D. 1974).

4 Bryant v. Barger, 112 Ind. App. 17, 42 N.E.2d 429 (1942); Rubinstein v. Rubinstein, 283 S.W.2d 603 (Mo. 1955); Creasman v. First Federal Sav. & Loan Ass'n of Hendersonville, 279 N.C. 361, 183 S.E.2d 115 (1971).

[5] McLaurin v. McLaurin, 265 S.C. 149, 217 S.E.2d 41 (1975).

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X. Validity

A. In General

§ 165. Forged and altered instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 45

A forged deed is absolutely void and wholly ineffectual to pass title,[1] even to a subsequent innocent purchaser from the grantee under such forged deed,[2] because the grantee has no title to convey.[3] A forged deed is void ab initio[4] and constitutes a nullity; as such, it cannot provide a basis for a superior title as against the original grantor.[5] It vests no title in a grantee.[6] There can be no bona fide holder of title under a forged deed.[7]

Where the signature of one grantor on a deed is genuine but the signature of the other grantor is a forgery, the deed is only partially valid and is effective to convey only the interest of the grantor whose interest is genuine.[8] Whether a deed has been forged is a question of fact, which must be proven by clear and convincing evidence.[9]

CUMULATIVE SUPPLEMENT

Cases:

Generally, void deeds are limited to forged deeds or deeds that violate the constitutional protection of homestead. Schlossberg v. Estate of Kaporovsky, 303 So. 3d 982 (Fla. 4th DCA 2020).

Recording a forged deed does not transform it into a document with legal authority to establish a valid property interest, for it does not change the legal rights of anyone. Faison v. Lewis, 25 N.Y.3d 220, 32 N.E.3d 400 (2015).

[END OF SUPPLEMENT]

Footnotes

[1] Bennerson v. Small, 842 F.2d 710 (3d Cir. 1988) (applying Virgin Islands law); Hockett v. Larson, 742 F.2d 1123 (8th Cir. 1984) (applying Iowa law); Cumberland Capital Corp., Inc. v. Robinette, 57 Ala. App. 697, 331 So. 2d 709 (Civ. App. 1976); Schwarz v. Colonial Mortg. Co., 326 Ark. 455, 931 S.W.2d 763 (1996); M.M. & G., Inc. v. Jackson, 612 A.2d 186 (D.C. 1992); McCoy v. Love, 382 So. 2d 647 (Fla. 1979); Greenlee v. Mitchell, 607 So. 2d 97 (Miss. 1992); ABN AMRO Mortg. Group, Inc. v. Stephens, 91 A.D.3d 801, 939 N.Y.S.2d 70 (2d Dep't 2012).

[2] Bennerson v. Small, 842 F.2d 710 (3d Cir. 1988) (applying Virgin Islands law); Hockett v. Larson, 742 F.2d 1123 (8th Cir. 1984) (applying Iowa law); Cumberland Capital Corp., Inc. v. Robinette, 57 Ala. App. 697, 331 So. 2d 709 (Civ. App. 1976); M.M. & G., Inc. v. Jackson, 612 A.2d 186 (D.C. 1992); McCoy v. Love, 382 So. 2d 647 (Fla. 1979).
The claimant of title to real property whose claim was based on a forged quitclaim deed from a prior owner had no interest in the property, and the purchaser of the real property at a foreclosure sale thus had good fee title to the property as the forged deed could not vest title in the claimant. Vatacs Group, Inc. v. U.S. Bank, N.A., 292 Ga. 483, 738 S.E.2d 83 (2013).

[3] Brock v. Yale Mortg. Corp., 287 Ga. 849, 700 S.E.2d 583 (2010).

[4] La Jolla Group II v. Bruce, 211 Cal. App. 4th 461, 149 Cal. Rptr. 3d 716 (5th Dist. 2012); ABN AMRO Mortg. Group, Inc. v. Stephens, 91 A.D.3d 801, 939 N.Y.S.2d 70 (2d Dep't 2012); Morris v. Wells Fargo Bank, N.A., 334 S.W.3d 838 (Tex. App. Dallas 2011).

[5] La Jolla Group II v. Bruce, 211 Cal. App. 4th 461, 149 Cal. Rptr. 3d 716 (5th Dist. 2012).

[6] Vatacs Group, Inc. v. U.S. Bank, N.A., 292 Ga. 483, 738 S.E.2d 83 (2013).

[7] Thomas v. Nadel, 427 Md. 441, 48 A.3d 276 (2012).

[8] Hockett v. Larson, 742 F.2d 1123 (8th Cir. 1984) (applying Iowa law).

[9] Greenlee v. Mitchell, 607 So. 2d 97 (Miss. 1992).

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X. Validity

A. In General

§ 166. Curative statutes to validate deeds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 52

The legislature may validate imperfect or irregular deeds by enactment of curative statutes provided no vested rights are thereby disturbed.[1] A statute may remedy such defects or irregularities as the absence of a seal[2] or acknowledgment in other states without witnesses.[3] Even though such a statute is designed to apply retroactively, it is constitutional provided it does not impair vested rights or interfere with the rights of innocent third persons.[4] Such statutes must therefore be carefully construed so as not to violate constitutional requirements.[5] Consequently, curative acts generally are held to validate conveyances ab initio as to the original parties and only from the date of enactment as to third parties.[6]

Some curative statutes operate by way of a time limitation after the expiration of which all recorded deeds are declared valid and beyond challenge.[7]

Footnotes

1 Dennen v. Searle, 149 Conn. 126, 176 A.2d 561 (1961); Sabasteanski v. Pagurko, 232 A.2d 524 (Me. 1967).
As to the validity of curative legislation, generally, see Am. Jur. 2d, Constitutional Law §§ 752, 781.
As to the validity of curative acts relating to acknowledgments, see Am. Jur. 2d, Acknowledgments § 92.

2 Dennen v. Searle, 149 Conn. 126, 176 A.2d 561 (1961).

3 Browder v. Roby, 102 So. 2d 275 (La. Ct. App. 2d Cir. 1958).

4 Blount v. Downs, 226 U.S. 609, 33 S. Ct. 216, 57 L. Ed. 380 (1912); McFaddin v. Evans-Snider-Buel Co., 185 U.S. 505, 22 S. Ct. 758, 46 L. Ed. 1012 (1902); Randall v. Kreiger, 90 U.S. 137, 23 L. Ed. 124, 1874 WL 17470 (1874); Sabasteanski v. Pagurko, 232 A.2d 524 (Me. 1967).

5 Sabasteanski v. Pagurko, 232 A.2d 524 (Me. 1967).

[6] Sabasteanski v. Pagurko, 232 A.2d 524 (Me. 1967).

[7] Bailey v. Karnopp, 170 Neb. 836, 104 N.W.2d 417 (1960).

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X. Validity

A. In General

§ 167. Burden of proof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 196(.5), 196(1)

A party, whether plaintiff or defendant, who seeks to invalidate a deed has the burden of affirmatively proving the invalidity or irregularity.[1] Where the basis for setting aside a deed is the grantor's alleged lack of mental capacity, the burden is upon those who seek to have the deed set aside to establish that, at the time of its execution, the grantor lacked sufficient mental capacity.[2]

The degree of proof required varies among the jurisdictions and may be affected to some extent by the nature of the claimed invalidity.[3]

CUMULATIVE SUPPLEMENT

Cases:

Son who sought to invalidate mother's transfer-on-death deed which conveyed property to his ex-wife failed to rebut presumption that mother lacked capacity to make a knowing and understanding conveyance, where mother knew what property she had, knew who son's ex-wife was, and indicated that she wanted her grandchildren to have her property, and even though son contended that mother lost her competence to make financial decisions when she had a stroke, he stated that she possessed the mental competence to give him permission to write checks off of her checking account. Matter of Estate of Moore, 448 P.3d 425 (Kan. 2019).

[END OF SUPPLEMENT]

Footnotes

[1] Smith v. Walker, 91 So. 3d 77 (Ala. Civ. App. 2012); Watson v. Johnson, 1965 OK 115, 411 P.2d 498 (Okla. 1965).
In the absence of a confidential relationship, such as between parent and child, the grantor of the deed assailing its validity bears the burden of proof. Julian v. Buonassissi, 414 Md. 641, 997 A.2d 104 (2010).
As to the burden of proof on the issue of undue influence, see § 184.

[2] Hahn v. Tanksley, 317 S.W.3d 145 (Mo. Ct. App. S.D. 2010).

[3] Smith v. Walker, 91 So. 3d 77 (Ala. Civ. App. 2012) (clear and convincing evidence); Szmyd v. Wingate, 341 So. 2d 1271 (La. Ct. App. 2d Cir. 1977) (forgery; preponderance of evidence); Gajewski v. Bratcher, 221 N.W.2d 614, 81 A.L.R.3d 211 (N.D. 1974) (mutual mistake; clear, satisfactory, and convincing evidence); Bekins Bar V Ranch v. Beryl Baptist Church of Beryl, Iron County, 642 P.2d 371 (Utah 1982) (fraud; clear and decisive proof); Carter v. Carter, 223 Va. 505, 291 S.E.2d 218 (1982) (fraud or coercion; clear, cogent, and convincing evidence).

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X. Validity

B. Fraud

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Research References

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West's Key Number Digest, Deeds 45, 70, 74, 196(2), 211(3)

A.L.R. Library

A.L.R. Index, Deeds and Conveyances
A.L.R. Index, Quitclaim Deeds
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X. Validity

B. Fraud

§ 168. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 70, 196(2), 211(3)

A.L.R. Library

Procuring signature by fraud as forgery, 11 A.L.R.3d 1074

The obligations of deeds can be avoided by showing that they were procured by means of fraud or undue influence.[1] Whether the deed is void at law or only voidable in equity depends upon the character of the fraud perpetrated upon the injured party. Generally, if the grantor's signature to a deed is procured by fraudulently reading the instrument to him or her in terms different from the real ones[2] or by fraudulently misrepresenting its character,[3] or if by trick or fraud an instrument other than the one the grantor intended to sign is substituted and is signed by the grantor,[4] and it cannot be said that the signing resulted from the grantor's inattention or negligence in signing something without knowing its contents,[5] the instrument is void at law.[6] While the mere failure to perform a promise does not authorize the rescission of a deed, a false representation of an existing fact or a material promise to do something in the future, which is made by the promisor with no intention to perform, will authorize rescission; the essence of fraud is not the breach of a promise but the fraudulent intent not to perform.[7] A deed may be set aside when a promise is made with no intention to comply, and that promise induces the execution of the deed.[8] However, the rule that a deed procured by fraud is void is limited to situations where the fraud in the execution is such that it can be said that there was a complete failure of delivery.[9]

Merely showing that a parent-child or other family relationship exists between the parties to a deed will not support a charge of either actual or constructive fraud[10] though evidence may show that children are named as grantees in order to shield a parent-grantor's assets from a pending judgment.[11]

Inadequacy of consideration alone is not sufficient to set aside a conveyance based on fraud unless the inadequate price, taken in connection with other circumstances of a suspicious nature, raises a vehement presumption of fraud.[12]

In a cause of action to set aside a deed based upon fraud, the plaintiff is required to present clear and convincing proof of the fraud before the deed may be set aside.[13]

CUMULATIVE SUPPLEMENT

Cases:

Quitclaim deed by which manager and sole shareholder of former owner of garage unit in condominium conveyed the unit was not procured by fraud, even though grantee obtained the deed through misrepresentations about the chain in title and its reason for seeking the deed, where grantee did not represent that the document was anything other than a quitclaim deed, manager and sole shareholder understood that he was signing a quitclaim deed to provide any interest he might have had in the garage unit, and statement by grantee's attorney alerting manager and sole shareholder to potential title issues surrounding the garage unit afforded him reasonable opportunity to investigate the chain of title for the parking spaces and understand what interests a quitclaim deed would transfer. Perfect Place, LLC v. Semler, 2018 CO 74, 426 P.3d 325 (Colo. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Howe v. Palmer, 80 Mass. App. Ct. 736, 956 N.E.2d 249 (2011).
As to undue influence, see §§ 177 to 184.

2 Sheffield v. Andrews, 679 So. 2d 1052 (Ala. 1996); Shores-Mueller Co. v. Lonning, 159 Iowa 95, 140 N.W. 197 (1913).

3 Cumberland Capital Corp., Inc. v. Robinette, 57 Ala. App. 697, 331 So. 2d 709 (Civ. App. 1976); Grimsley v. Singletary, 133 Ga. 56, 65 S.E. 92 (1909); Rivera v. Brazos Lodge Corp., 1991-NMSC-030, 111 N.M. 670, 808 P.2d 955 (1991).

4 Hauck v. Crawford, 75 S.D. 202, 62 N.W.2d 92 (1953); Tijerina v. Tijerina, 290 S.W.2d 277 (Tex. Civ. App. San Antonio 1956).

5 Taylor v. Godsey, 357 So. 2d 979 (Ala. 1978).
It is the grantor's responsibility to read the deed, and failure to read it will not relieve him of obligations entered under it and will not constitute fraud unless the grantee prevented the grantor's reading or induced the grantor not to read it. Carter v. Carter, 223 Va. 505, 291 S.E.2d 218 (1982).

6 Sheffield v. Andrews, 679 So. 2d 1052 (Ala. 1996); Harmston v. Harmston, 680 P.2d 751 (Utah 1984).

7 Popwell v. Greene, 465 So. 2d 384 (Ala. 1985).

8 Hood v. Smoak, 271 Ga. 86, 516 S.E.2d 301 (1999).

9 McCoy v. Love, 382 So. 2d 647 (Fla. 1979).

10 Turley v. Turley, 199 Mont. 265, 649 P.2d 434 (1982); Shupp v. Brown, 293 Pa. Super. 412, 439 A.2d 178 (1981); Carter v. Carter, 223 Va. 505, 291 S.E.2d 218 (1982).

11 Wolf v. Schumacher, 477 N.W.2d 827 (N.D. 1991).

[12] Durrence v. Durrence, 267 Ga. 280, 476 S.E.2d 741 (1996).

[13] Victory v. Smith, 2012 Ark. App. 168, 392 S.W.3d 892 (2012).

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23 Am. Jur. 2d Deeds § 169

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X. Validity

B. Fraud

§ 169. Signature procured by fraud as forgery

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 45, 70

A.L.R. Library

Procuring signature by fraud as forgery, 11 A.L.R.3d 1074

According to some courts, where the grantor's signature to a deed is procured by fraudulently concealing the character of the instrument as a deed or inducing the grantor to believe he or she is signing something other than a deed, the instrument is regarded as a forgery and is for that reason absolutely void, conferring no title or right upon the grantee or anyone claiming through or under the grantee.[1] Such instrument, when regarded as a forgery, is invalid in the hands of anyone to the same extent that it would have been if the grantor's signature had been actually forged by a third person.[2] This rule is not extended to situations where the grantor's signature is procured by a false or fraudulent representation as to the payment of the consideration where the grantor in signing the instrument intends to convey his or her interest in the property described.[3] In such a situation, the deed is not rendered void as against an innocent purchaser although it may be voidable as against the grantee and the grantee's privies or those having notice of the nature of the transaction.[4]

Footnotes

1 Cumberland Capital Corp., Inc. v. Robinette, 57 Ala. App. 697, 331 So. 2d 709 (Civ. App. 1976); Kuczewski v. De Magnassun, 242 Mich. 296, 218 N.W. 657, 57 A.L.R. 756 (1928).

2 Horvath v. National Mortg. Co., 238 Mich. 354, 213 N.W. 202, 56 A.L.R. 578 (1927).

[3] Conklin v. Benson, 159 Cal. 785, 116 P. 34 (1911); Kuczewski v. De Magnassun, 242 Mich. 296, 218 N.W. 657, 57 A.L.R. 756 (1928).

[4] Kuczewski v. De Magnassun, 242 Mich. 296, 218 N.W. 657, 57 A.L.R. 756 (1928); Diimmel v. Morse, 36 Wash. 2d 344, 218 P.2d 334 (1950).

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X. Validity

B. Fraud

§ 170. Nonperformance of promise which induced deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 70

If the transaction and deed were valid when the deed was executed, the deed is not invalidated by any subsequent act or omission of the grantee, such as nonpayment of the price;[1] and ordinarily, an unperformed promise to do something in the future is not fraud.[2] However, a promise made without the intention of performing it, or with the intention not to perform it, may constitute fraud such as will warrant the cancellation of a deed.[3] Such fraud relates back to the inception of the deed and vitiates the entire transaction.[4]

Footnotes

1 Anchor v. O'Toole, 94 F.3d 1014 (6th Cir. 1996) (applying Ohio law); Cowley v. Northern Pac. Ry. Co., 68 Wash. 558, 123 P. 998 (1912); Dorr v. Chesapeake & O. Ry. Co., 78 W. Va. 150, 88 S.E. 666 (1916).

2 Russell v. Robbins, 247 Ill. 510, 93 N.E. 324 (1910); Adams v. Gillig, 199 N.Y. 314, 92 N.E. 670 (1910).

3 Am. Jur. 2d, Cancellation of Instruments § 15.

4 Brown v. Phillips, 330 So. 2d 510 (Fla. 2d DCA 1976).

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X. Validity

B. Fraud

§ 171. Affirmance or disaffirmance

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 70

Ratification of a voidable deed may be shown by subsequent acts, words, or conduct evidencing an intent to ratify as by acquiescence in the conveyance for a considerable period of time or by confirmation in a valid will.[1] However, the death of the grantor without rescission does not have the same effect as though the grantor had affirmed the deed while alive, and all the power to disturb the title to the premises does not die with the grantor.[2]

Footnotes

1 Bopp v. Knowles, 359 Mo. 871, 224 S.W.2d 65 (1949).

2 Glojek v. Glojek, 254 Wis. 109, 35 N.W.2d 203 (1948).

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X. Validity

B. Fraud

§ 172. Rights of bona fide purchaser from grantee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 70, 74

A deed executed under the inducement of fraudulent misrepresentations is merely voidable, not void, and may be the foundation of a good title in the hands of one who takes the conveyance of the land in ignorance of the fraud practiced on the original grantor.[1] However, when a deed is procured by the grantee under circumstances of fraud which render it void, the courts are divided in opinion as to whether an innocent purchaser from the grantee should be protected. Some hold that protection will not be accorded to innocent purchasers from such a grantee;[2] other courts take the view that the deed may be given effect in equity in order to protect innocent purchasers.[3]

Where the rights of an innocent purchaser may be affected by holding the deed inoperative to pass title, only unusual circumstances, such as misreading the instrument to a blind or illiterate person[4] or misrepresentation of its contents by a person in whom the grantor is entitled to place confidence,[5] will support a plea of fraud as to the character of the instrument.[6]

Footnotes

1 McCoy v. Love, 382 So. 2d 647 (Fla. 1979).

2 Houston v. Forman, 92 Fla. 1, 109 So. 297, 48 A.L.R. 401 (1926); Walton v. Malcolm, 264 Ill. 389, 106 N.E. 211 (1914).

3 Merck v. Merck, 83 S.C. 329, 65 S.E. 347 (1909).

4 Wilcox v. American Telephone & Telegraph Co., 176 N.Y. 115, 68 N.E. 153 (1903).

5 Hale v. Hale, 62 W. Va. 609, 59 S.E. 1056 (1907).

6 Hoffer v. Crawford, 65 N.W.2d 625 (N.D. 1954).

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X. Validity

C. Duress

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 71, 196(4), 211(5)

A.L.R. Library

A.L.R. Index, Deeds and Conveyances
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 71, 196(4), 211(5)

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X. Validity

C. Duress

§ 173. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 71

A deed procured by duress is voidable at the election of the grantor[1] rather than void; and hence, the title of an innocent third person who purchases the property will prevail over that of a coerced grantor.[2] Such a deed may become binding even as to the grantee, by reason of the grantor's subsequent acquiescence in, or ratification of, its execution.[3]

The right to set aside a deed on the ground of duress is a personal right which, in the absence of a specific assignment, does not pass as an incident to a conveyance of realty.[4]

Footnotes

1 Barnette v. Wells Fargo Nevada Nat. Bank of San Francisco, 270 U.S. 438, 46 S. Ct. 326, 70 L. Ed. 669 (1926); Hogan v. Leeper, 1913 OK 428, 37 Okla. 655, 133 P. 190 (1913).

2 Hall v. Bollen, 148 Ky. 20, 145 S.W. 1136 (1912).

3 § 176.

4 Glenney v. Crane, 352 S.W.2d 773 (Tex. Civ. App. Houston 1961), writ refused n.r.e., (May 16, 1972).

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X. Validity

C. Duress

§ 174. What constitutes duress

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 71, 211(5)

When a party seeks to avoid a deed on the ground of duress, the true test is whether the will of the grantor of the deed is overcome by wrongful threats, inducing the grantor to do an act which he or she would otherwise not have done and was not bound to do.[1] Duress involves the state of mind of the grantor or transferor[2] and has been defined as a condition of the mind produced by improper external pressure destroying the free agency of the grantor and inducing him or her to execute a conveyance not of his or her own volition.[3] The necessary elements of duress are unlawful threats or coercion and that the exertion of such threats or coercion was sufficient to preclude the person from exercising his or her own free will.[4]

Duress which will avoid a deed consists in actual or threatened violence or imprisonment of the grantor,[5] or of the grantor's spouse[6] or parent or child,[7] which must be inflicted or threatened by the grantee or by someone acting with the grantee's knowledge and for the grantee's advantage.[8] A threatened prosecution may be regarded as duress which will avoid a deed if the grantor is not, in fact and in law, amenable to prosecution[9] though if the grantor is, in fact, in violation of laws or regulations governing the grantor's business, threats to notify the authorities do not constitute the type of duress needed to set aside a deed executed by the grantor.[10]

What constitutes duress is a matter of law, but whether duress exists in a particular situation is generally a fact issue.[11]

Footnotes

1 Lawler v. Speaker, 446 S.W.2d 888 (Tex. Civ. App. Amarillo 1969), writ refused n.r.e., (Dec. 31, 1969).

2 Lawler v. Speaker, 446 S.W.2d 888 (Tex. Civ. App. Amarillo 1969), writ refused n.r.e., (Dec. 31, 1969).

3 Lawler v. Speaker, 446 S.W.2d 888 (Tex. Civ. App. Amarillo 1969), writ refused n.r.e., (Dec. 31, 1969).
As to the definition and nature of duress, see Am. Jur. 2d, Duress and Undue Influence § 1.

[4] Lawler v. Speaker, 446 S.W.2d 888 (Tex. Civ. App. Amarillo 1969), writ refused n.r.e., (Dec. 31, 1969).

[5] Kronmeyer v. Buck, 258 Ill. 586, 101 N.E. 935 (1913); Hogan v. Leeper, 1913 OK 428, 37 Okla. 655, 133 P. 190 (1913); U.S. Fidelity & Guaranty Co. v. Carr, 242 S.W.2d 224 (Tex. Civ. App. San Antonio 1951), writ refused.

[6] Jordan v. Beecher, 143 Ga. 143, 84 S.E. 549 (1915).

[7] Ball v. Ball, 79 N.J. Eq. 170, 81 A. 724 (Ct. Err. & App. 1911).

[8] Gilley v. Denman, 185 Ala. 561, 64 So. 97 (1913); Hall v. Bollen, 148 Ky. 20, 145 S.W. 1136 (1912).

[9] Kronmeyer v. Buck, 258 Ill. 586, 101 N.E. 935 (1913).

[10] Patterson v. Merchants Truck Line, Inc., 448 So. 2d 288 (Miss. 1984).

[11] Lawler v. Speaker, 446 S.W.2d 888 (Tex. Civ. App. Amarillo 1969), writ refused n.r.e., (Dec. 31, 1969).

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X. Validity

C. Duress

§ 175. Presumptions and burden of proof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 71, 196(4)

Duress is not to be presumed,[1] and the burden of proof is on the grantor to establish that what the grantor did was not of his or her own free will.[2]

Footnotes

1 Rubenstein v. Rubenstein, 40 N.J. Super. 371, 123 A.2d 67 (Ch. Div. 1956).

2 Stavins v. Stavins, 70 Ill. App. 3d 622, 26 Ill. Dec. 927, 388 N.E.2d 928 (1st Dist. 1979); Rubenstein v. Rubenstein, 40 N.J. Super. 371, 123 A.2d 67 (Ch. Div. 1956); Lawler v. Speaker, 446 S.W.2d 888 (Tex. Civ. App. Amarillo 1969), writ refused n.r.e., (Dec. 31, 1969).

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X. Validity

C. Duress

§ 176. Ratification; laches; disaffirmance

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 71

A deed given under alleged duress is voidable only in the sense that it will not be set aside where the grantor acquiesces in it after the removal of improper pressure.[1] One claiming a deed to be invalid by reason of duress must repudiate it promptly, or he or she will be deemed to have affirmed it.[2]

Footnotes

1 Hall v. Bollen, 148 Ky. 20, 145 S.W. 1136 (1912); Bushnell v. Loomis, 234 Mo. 371, 137 S.W. 257 (1911).

2 Fowler v. Fowler, 197 A.D. 572, 188 N.Y.S. 529 (3d Dep't 1921).

23 Am. Jur. 2d Deeds X D Refs.

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X. Validity

D. Undue Influence

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 72 to 72(7), 196(3), 211(4)

A.L.R. Library

A.L.R. Index, Deeds and Conveyances
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 72 to 72(7), 196(3), 211(4)

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X. Validity

D. Undue Influence

§ 177. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 72(.5), 72(1)

Forms

Am. Jur. Pleading and Practice Forms, Deeds § 23 (Complaint, petition, or declaration—For cancellation of deed—Procured by undue influence of spouse exerted against aged and infirm spouse—By children and heirs of deceased spouse)

The obligations of deed can be avoided by showing that they were procured by means of fraud or undue influence.[1]

Definition:

"Undue influence" in the execution of a deed is defined as overpersuasion, coercion, force, or deception that deprives an individual of his or her free agency.[2] The undue influence must be of sufficient force to destroy the free agency of the grantor and to constrain the grantor to do, against his or her will, that which the grantor would otherwise have refused to do.[3]

A grantor who has been unduly influenced does not have the requisite intent to execute the deed.[4] However, a deed executed as a result of undue influence practiced upon the grantor is voidable rather than void,[5] and if, before the grantor takes steps to avoid the deed, the grantee therein conveys the premises to an innocent purchaser, a court of equity will extend protection to such purchaser.[6] Undue influence constitutes an equitable ground for the cancellation of a deed.[7]

Undue influence is distinguishable from duress[8] in that undue influence is a more subtle domination of the grantor's will, especially by one who stands in a relation of confidence with the grantor.[9]

Whether a grantor is subject to the influence of another, for purposes of a claim of undue influence, concerns the grantor's general state of mind and whether the grantor is of a character readily subject to the improper influence of others.[10] Whether improper influence was exercised must be inferred from the facts and circumstances of the particular case, such as the situation of the grantor and the grantor's relation to others; condition of health and its effect upon the grantor's body and mind; dependence upon, and subjection to, the persons claimed to have exerted the influence; and their opportunity to wield such influence.[11] For a finding of undue influence with respect to a deed transfer, four elements are required: (1) a person who is subject to influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence.[12]

An unnatural, unreasonable, improvident, or unjust disposition of property suggests undue influence[13] though a mere suspicion that the execution of a deed was obtained through improper means is not sufficient to establish undue influence.[14] The fact that the grantor, in executing a conveyance, was actuated by the motives of affection, esteem, and gratitude for favors shown does not make out a case of undue influence.[15]

The question of undue influence is one of fact.[16]

CUMULATIVE SUPPLEMENT

Cases:

Evidence was insufficient to establish property owner's execution of warranty deeds transferring 1,000 acres of farmland to former tenant were the result of undue influence; after owner's brother died he had no immediate family and developed a very close relationship with tenant and his family, owner's 1999 will nominated tenant as his personal representative and bequeathed all of owner's farm equipment to tenant, in 2005 owner had a real estate transfer statement prepared to transfer ten acres to tenant but the transaction did not occur, in 2007 owner conferred with attorney about gifting 240 acres to tenant, in 2011 owner met with attorney about selling some of the land to tenant and gifting him the rest of the land, and owner gifted two smaller tracts of land to the tenant farmers who were farming that land. Mock v. Neumeister, 296 Neb. 376, 892 N.W.2d 569 (2017).

[END OF SUPPLEMENT]

Footnotes

1 Howe v. Palmer, 80 Mass. App. Ct. 736, 956 N.E.2d 249 (2011).

2 Sleepy Hollow Ranch LLC v. Robinson, 373 S.W.3d 485 (Mo. Ct. App. S.D. 2012).

3 Mays v. Porter, 398 S.W.3d 454 (Ky. Ct. App. 2013); Howe v. Palmer, 80 Mass. App. Ct. 736, 956 N.E.2d 249 (2011).

4 Reynolds v. Molitor, 184 Conn. 526, 440 A.2d 192 (1981).

5 McCary v. Robinson, 272 Ala. 123, 130 So. 2d 25 (1961); Beard v. Beard, 173 Ky. 131, 190 S.W. 703 (1917); Howell v. Davis, 43 Tenn. App. 52, 306 S.W.2d 9 (1957); Boardman v. Lorentzen, 155 Wis. 566, 145 N.W. 750 (1914).

[6] Hall v. Bollen, 148 Ky. 20, 145 S.W. 1136 (1912).

[7] Reynolds v. Molitor, 184 Conn. 526, 440 A.2d 192 (1981); Harmston v. Harmston, 680 P.2d 751 (Utah 1984).

[8] § 173.

[9] Slack v. Rees, 66 N.J. Eq. 447, 59 A. 466 (Ct. Err. & App. 1904); Sprinkle v. Wellborn, 140 N.C. 163, 52 S.E. 666 (1905); Lawler v. Speaker, 446 S.W.2d 888 (Tex. Civ. App. Amarillo 1969), writ refused n.r.e., (Dec. 31, 1969).

[10] Quemada v. Arizmendez, 153 Idaho 609, 288 P.3d 826 (2012).

[11] Boshell v. Lay, 596 So. 2d 581 (Ala. 1992); Reynolds v. Molitor, 184 Conn. 526, 440 A.2d 192 (1981); Agner v. Bourn, 281 Minn. 385, 161 N.W.2d 813 (1968); Perkins v. Rantz, 631 S.W.2d 907 (Mo. Ct. App. S.D. 1982); Noto v. Sparacio, 56 A.D.2d 840, 392 N.Y.S.2d 76 (2d Dep't 1977); Tinney v. Tinney, 770 A.2d 420 (R.I. 2001); Self v. Thornton, 343 S.W.2d 485 (Tex. Civ. App. Texarkana 1960), writ refused n.r.e., (Apr. 5, 1961).

[12] Quemada v. Arizmendez, 153 Idaho 609, 288 P.3d 826 (2012); Howe v. Palmer, 80 Mass. App. Ct. 736, 956 N.E.2d 249 (2011).

[13] Perkins v. Rantz, 631 S.W.2d 907 (Mo. Ct. App. S.D. 1982); Self v. Thornton, 343 S.W.2d 485 (Tex. Civ. App. Texarkana 1960), writ refused n.r.e., (Apr. 5, 1961).

[14] Boshell v. Lay, 596 So. 2d 581 (Ala. 1992).

[15] Mallow v. Walker, 115 Iowa 238, 88 N.W. 452 (1901); Linn v. Blanton, 111 Kan. 743, 208 P. 616 (1922); Blochowitz v. Blochowitz, 122 Neb. 385, 240 N.W. 586, 82 A.L.R. 949 (1932); Boardman v. Lorentzen, 155 Wis. 566, 145 N.W. 750 (1914).

[16] Hawthorne v. Jenkins, 182 Ala. 255, 62 So. 505 (1913) (overruled in part on other grounds by, Gibbons v. Gibbons, 205 Ala. 636, 88 So. 833 (1921)); Olive v. McNeal, 47 So. 3d 735 (Miss. Ct. App. 2010); Hendricks v. Porter, 110 N.W.2d 421 (N.D. 1961).

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23 Am. Jur. 2d Deeds XI A Refs.

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XI. Construction

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 90 to 93, 95, 97 to 99, 101

A.L.R. Library

A.L.R. Index, Deeds and Conveyances
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 90 to 93, 95, 97 to 99, 101

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XII. Operation and Effect

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 43, 65, 108

A.L.R. Library

A.L.R. Index, Deeds and Conveyances
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 43, 65, 108

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